Arbitration CAS 2011/A/2364 Salman Butt v. International Cricket Council (ICC), award of 17 April 2013

Panel: Mr Graeme Mew (Canada), President; Mr Romano Subiotto QC (United Kingdom); His Honor James Robert Reid QC (United Kingdom)

Cricket
Match fixing
Discretion to impose a sanction that is less than the minimum sanction set out in the ICC Code
Exceptional circumstances and deviation from the minimum level of sanction imposed in the first instance
Infringement of Article 2.1.1 and absence of financial gain

1. **According to CAS case law and under English law, a CAS panel only has authority to reduce a minimum sanction in exceptional circumstances (e.g., where that sanction would not be just or proportionate). While a CAS panel is also entitled to modify a minimum sanction which is imposed irrationally on the basis that such a situation would also be exceptional, the threshold for showing irrationality is high, namely it must be shown that the decision taken was obviously or self-evidently unreasonable or perverse.**

2. **Consistent with the principles of CAS case law, significant deference should be afforded to the international federation's expertise and authority to determine the minimum level of a sanction required to achieve its strategic imperatives. A CAS panel will only deviate from that minimum level of sanction where the case gives rise to exceptional circumstances (including where the sanction is disproportionate).**

3. **An infringement of Article 2.1.1 of the ICC Code does not require a player to receive gain financially. The question to be answered is whether the player fixed, contrived in any way, influenced improperly, or was a party to any effort to fix, contrive in any way, or influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event. In other words, a player who is involved in a fix breaches Article 2.1.1 notwithstanding that he does not benefit financially from doing so.**

I. PARTIES

1. The International Cricket Council (the "ICC") is the international governing body for cricket. It is responsible for the organisation and governance of cricket's major international tournaments, including Test Matches. The ICC enforces an Anti-Corruption Code for Players (the "ICC Code").

2. Mr Salman Butt is a Pakistani national and batsman, who played for Pakistan's international cricket team between 2003 and 2010. Mr Butt became Captain of the Pakistan's international Test Match cricket team on July 17, 2010. Mr Butt was selected to play as Captain of Pakistan and did play as Captain of Pakistan in the following two Test Matches:

- A Test Match between Pakistan and England, which took place between August 18 and August 21, 2010 at the Oval Cricket Ground (the "Oval Test"); and
- A Test Match between Pakistan against England, which took place between August 26 to August 29, 2010 at the Lord's Cricket Ground (the "Lord's Test")

II. FACTUAL BACKGROUND

A. Background Facts

3. The relevant facts and allegations based on the parties' written submissions, pleadings, and evidence adduced at the hearing are summarised below. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. At all relevant times, Mr Butt's agent was Mazhar Majeed, a United Kingdom national of Pakistani descent. Messrs Majeed and Butt had a close relationship and Mr Majeed often accompanied Mr Butt and the rest of the Pakistan cricket team on tours to other Test playing nations.

5. In cricket a "no ball" is a penalty against the fielding team, usually as a result of an illegal delivery by the bowler. The delivery of a no ball results in one run being added to the batting team's score, and an additional ball must be bowled. In addition, the number of ways in which the batsman can be given out is reduced.

6. According to Law 24(5) of the MCC Laws of Cricket, a "no ball" is not a fair delivery. For a delivery to be fair in respect of the feet, in the delivery stride (a) the bowler's back foot must land within and not touching the return crease appertaining to his stated mode of delivery; (b) the bowler's front foot must land with some part of the foot, whether grounded or raised; (i) on the same side of the imaginary line joining the two middle stumps as the return crease described in (a) above and (ii) behind the popping crease. If the bowler's end umpire is not satisfied that all of these three conditions have been met, he shall call and signal "No ball".

a) ICC World Twenty20 Tournament in the West Indies (May 2010)

7. On May 10, 2010, Mr Majeed texted the following message to Mr Butt on three different telephone numbers: *"Bro once u spoken to him text me to confirm"*. He received back the following reply from Mr Butt: *"Yes"*.

8. There were then five further text messages sent from Mr Majeed's phone to Mr Butt's Dubai phone number.

- The first read: *"Ok how about the other thing. One in 7th over and one in 8th…"*.
- The next read: *"This will only work if u score in first 2 overs and no wickets"*.
- The third and fourth text messages both read: *"Bro also confirm other thing in 7th and 8th over. 1 fall in each"*.
- The fifth and final text read: *"Please text me to confirm for second thing"*.

b) News of the World Undercover Operation

9. In the Summer of 2010, Mazhar Mahmood, an undercover reporter for a newspaper, the News of the World (the "NoTW"), posed as Mohsin Khan (hereinafter "Mr Khan"), a representative of a betting syndicate, in order to befriend Mr Majeed. Messrs Majeed and Khan sought to fix elements of the Oval Test and Lord's Test as follows:

aa) Oval Test

10. On August 18, 2010 at around 10:50pm, Messrs Khan and Majeed met in a car park outside the *Bombay Brasserie* restaurant in London. During that meeting, Mr Khan said: *"So listen let's just put this to the test if it's going to work, I mean, would you be able to tell me that, I don't know, on Thursday there will be a no ball in whatever over it is?"* Mr Majeed replied *"Yeah sure"*. In response, Mr Khan said: *"We'll give the boys ten grand no problem, whatever the rate is. What does he want for a no ball just so that our boys have got an indication that this is on. Then they'll invest big"*. Mr Majeed replied *"Fine, I'll let you know on Thursday evening and I will tell you on Friday what the no ball is going to be. I'll give you two if you want"*. Mr Khan responded: *"Ok give me two no balls, ok"* and Mr Majeed said *"I'll give you the two"*. Mr Khan said *"We'll pay the ten grand, no problem. OK alright"*[1].

11. On the evening of August 19, 2010, Mr Majeed introduced Mr Khan to various members of the Pakistan cricket team during a dinner at the *Al Shishawi* restaurant on Edgware Road in London. That evening, Mr Khan gave Mr Majeed £10,000 in exchange for information about "no balls" that would be bowled during the Oval Test which Mr Majeed agreed to provide the following morning.

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1 Transcript of two DVDs submitted in support of the ICC's Answer to Mr Butt's appeal (the "Transcript").

12. On August 20, 2010 at 9:45am, Mr Majeed spoke to Mr Khan and said: *"Ok, so it'd all been organised for this morning. I got a call literally twenty minutes ago, Saying that Waqar* [Younis, then coach of the Pakistan national cricket team] *just sat down with the fast bowlers for half an hour about how many extras they gave last game. Yeah. So you know it'll be quite … too much …. Too suspicious if they go out now and just give two new … uh no-balls in the morning. Yeah"*. Mr Majeed asked that Mr Khan meet him that evening by which time he would procure *"better proof"*.

13. On August 20, 2010 at 11:32pm, Messrs Majeed and Khan spoke again about the Oval Test. By that time, the Oval Test was only three days old and Pakistan were in a commanding position: England were 9 wickets down in their second innings and had only a modest lead of 146 runs. During that call on the evening of August 20, 2010, Mr Majeed told Mr Khan that Mr Butt would play out a maiden over in the first full over he faced on August 21, 2010. In order further to convince Mr Khan of this fact, Mr Majeed spoke to Mr Butt on speakerphone and allowed Mr Khan to listen-in. During that call, Mr Majeed sought to procure that Mr Butt played out two maidens rather than one (following a request by Mr Khan). Mr Butt declined to do so, claiming that he would not know what the conditions would be like at the time. Mr Butt did not object, however, to Mr Majeed's proposal that he play out a maiden during the first full over he faced.

14. The next morning, on August 21, 2010, Mr Khan visited Mr Majeed's home. Mr Majeed spoke with Mr Butt at 8:14am. He asked Mr Butt to *"just stick to what we said last night okay. Just leave it at that"*. Mr Butt replied: *"Yes"*. Mr Majeed clarified further *"So, just, just the first full over you play, you just make sure you play a maiden, ok"*. Mr Butt replied *"Theek Hai"*, which can roughly be translated as *"OK"*. Mr Majeed also asked Mr Butt to *"go and tap the middle of the pitch"* after the second ball as a signal. Mr Butt replied *"Theek Hai"*.

15. That day, Mr Butt came into bat in the first over of the game after an opening batsman (Yasir Hameed) was caught at slip by Graeme Swann off the bowling of James Anderson. Mr Butt did not play out a maiden over in the first over he faced and did not give the requested signal.

b) Lord's Test

16. Following the Oval Test, Mr Majeed explained to Mr Khan that the fix did not transpire because Mr Butt was unable to guarantee a maiden over in circumstances where the ball was new, hard, and could have gone for runs as a result of an edge. According to Mr Majeed, this was the reason that Mr Butt did not give the requested signal.

17. Messrs Khan and Majeed met again on the evening of August 25, 2010 at the Copthorne Tara Hotel in West London. During that meeting, Mr Majeed provided Mr Khan with information on three "no balls" that would be bowled in the Lord's Test which was due to begin the following day. Mr Majeed explained that the three "no balls" were to be bowled by Mohammad Amir (two) and Mohammad Asif (one) as follows:

- Mr Amir would bowl a "no ball" on the first ball of the third over;

- Mr Asif would bowl a "no ball" on the sixth ball of the tenth over; and
- Mr Amir would bowl a "no ball" on the last ball of the first over he bowled to a right handed batsman (which would be bowled from around the wicket).

18. Mr Majeed also indicated that this sequence of events was guaranteed because *"the captain knows, he's the one that brings them on and brings them off. He will definitely do it"*.

19. The odds of estimating this exact sequence of events correctly are estimated (subject to certain caveats and assumptions) by an eminent cricket statistician (Frank Duckworth) to be 512,000 to 1.

20. During the meeting, Mr Khan paid Mr Majeed £140,000 as a deposit to be drawn down over time in exchange for future inside information about fixes involving the Pakistan cricket team. The money given to Mr Majeed was not in consideration of the information given to Mr Khan about the Lord's Test.

21. On August 26, 2010, Mr Butt won the toss on behalf of Pakistan and put England into bat. Mr Butt instructed Messrs Amir and Asif to open the bowling for Pakistan. As indicated by Mr Majeed the previous night, Amir bowled a "no ball" on the first ball of the third over and Mr Asif bowled a "no ball" on the sixth ball of the tenth over.

22. Rain curtailed play on August 26, 2010, so the third "no ball" could not be bowled as scheduled. That night Mr Majeed instructed Mr Amir to bowl the third "no ball" on the third delivery of his third full over the following morning (*i.e.*, on the third delivery of the third over after he had completed the over from August 26, 2010, which had been stopped by rain). On August 27, 2010, Mr Amir bowled a "no ball" on the third ball of his third full over.

23. On August 29, 2010, the NoTW published a story that elements of the Lords Test Match had been fixed. The story included narrative, video, and audio recordings of the discussions between Messrs Majeed and Khan.

24. On September 2, 2010, the ICC charged Mr Butt (and Messrs Amir and Asif) with several breaches of the ICC Code. The ICC also suspended Mr Butt from playing international cricket pending determination of the charges. This suspension was not challenged by Mr Butt.

25. Thereafter, the Chairman of the ICC Code of Conduct Commission (the Honourable Michael J. Beloff QC) convened a tribunal consisting of himself (as Chairman) Justice Albie Sachs, and Mr Sharad Rao (the "Tribunal") to hear the matter and determine whether the charges were made out.

B. Proceedings before the ICC Tribunal

26. As indicated, Mr Butt was charged with several infringements of the ICC Code, including breach of Articles 2.1.1, 2.2.3, and 2.4.2.

27. Article 2.1.1 of the ICC Code states:

> *"Fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event … shall amount to an offence by a Player or Player Support Personnel under the Anti-Corruption Code".*

28. Article 2.2.3 of the ICC Code states:

> *"Ensuring the occurrence of a particular incident in an International Match or ICC Event, which occurrence is to the Player or Player Support Personnel's knowledge the subject of a Bet and for which he/she expects to receive or has received any reward … shall amount to an offence by a Player or Player Support Personnel under the Anti-Corruption Code".*

29. Article 2.4.2 of the ICC Code states:

> *"Failing to disclose to the ACSU (without undue delay) full details of any approaches or invitations received by the Player or Player Support Personnel to engage in conduct that would amount to a breach of the Anti-Corruption Code … shall amount to an offence by a Player or Player Support Personnel under the Anti-Corruption Code".*

30. On December 23, 2010, the Tribunal rejected an application made by Mr Butt to stay the Tribunal proceedings pending a decision by the U.K. Crown Prosecution Service as to whether to charge the players with criminal offences.

31. The Tribunal heard the matter in January 2011 (between January 6 and January 11) and rendered its determination on February 5, 2011 (the "Determination").

32. In relation to the Lord's Test, it held *inter alia* as follows:

- If the Tribunal upheld the Article 2.1.1 charge (the "Major Charge," which it regarded, in the circumstances, of the case as being more serious than that under Article 2.2.3) against a player in relation to the Lords' Test, it did not need to go on to consider any further charges brought against that player in relation to the Lords' Test; and

- The charge under Article 2.1.1 of the ICC Code against Mr Salman Butt arising from Mr Butt being party to the bowling of two deliberate "no balls" by Mr Mohammad Amir and one deliberate "no ball" by Mr Mohammad Asif in the Lords Test played between Pakistan and England from 26th to 29th August, 2010 was proved beyond reasonable doubt.

33. In relation to the Oval Test, the Tribunal found that the charge under Article 2.4.2 of the ICC Code against Mr Salman Butt arising from Mr Butt's failure to disclose to the ICC the approach by Mr Majeed that he should bat a maiden over in the Oval Test played between Pakistan and England from 18th to 21st August, 2010 was proved beyond reasonable doubt.

However, the ICC charges under Articles 2.1.1 in relation to the Oval Test (for agreeing to fix two deliberate "no balls" and for agreeing to play out a maiden over) were dismissed.

34. In reaching its Determination, the Tribunal held that the NoTW recordings were authentic and that the cause of the coincidence between Mr Majeed's predictions of the timing of the "no balls" during the Lord's Test and their actual occurrence was a result of inside information. It also held that the Players, including Mr Butt, provided the inside information to Mr Majeed (*i.e.*, Mr Butt was involved in the fix). This reflected *inter alia* the following factors:

- The antecedent discussions between Messrs Majeed and Butt during the Twenty20 World Cup in the West Indies and in relation to the Oval Test impregnated the Lord's Test and were inculpatory. Mr Butt's explanations for these discussions (that they were part of an elaborate tease) did not withstand critical scrutiny on the basis that (1) any joke must have worn thin by the time of the Lord's Test, (2) it was inappropriate for a Pakistani cricket fan to be joking about such matters *during* a Test Match, (3) Mr Butt's attitude towards the authenticity of the Oval phone calls was inconsistent, and (4) the communications and interchanges defied Mr Butt's construction. According to the Tribunal, Mr Butt was, at a minimum, aware that an approach was being made to him to fix aspects of the Oval Test.

- The timing of the various contacts between Messrs Butt and Majeed was inculpatory.

- Mr Butt was the only person who could guarantee which bowler bowled, when, and for how long. The success of the fix could not be ensured without Mr Butt's collaboration.

35. The Tribunal found that within the Pakistani team, Mr Butt was the leader for good and for ill. It imposed a sanction on Mr Butt of ten years ineligibility, five years of which were suspended on condition that he commits no further breach of the ICC Code and that he participates under the auspices of the Pakistan Cricket Board in a programme of Anti-Corruption education.

C. Proceedings before the English Criminal Courts

36. On February 4, 2011, the U.K. Crown Prosecution Service announced that it had charged, among others, Mr Butt with (1) conspiracy to accept corrupt payments contrary to Section 1 of the *Prevention of Corruption Act 1906*, and (2) conspiracy to cheat at gambling, an offence under Section 42 of the *Gambling Act 2005*.

37. Mr Butt disputed the charges and the matter was heard by Mr Justice Cooke and a jury between October 4, 2011 and October 26, 2011.

38. Mr Butt was found guilty of both charges and sentenced to prison for two years and six months for the corrupt payments offence and two years for the gambling offence (to run

concurrently). Mr Butt served approximately seven months of prison time, before being released on licence.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. The following describes the correspondence between the CAS and Mr Butt during these proceedings. For ease of understanding and for completeness, the factual description includes correspondence which concerns appeals filed by Messrs Amir and Asif in relation to the Determination.

- On February 25, 2011, the CAS received Statements of Appeal against the Determination from Mr Asif, Mr Butt, and Mr Amir. Mr Asif nominated Romano Subiotto QC for appointment to the Panel. Mr Butt proposed three arbitrators for appointment to the Panel: Mr Selvadurai Pathmanaban, Mr Om Lalla, and Mr Muchadeyi Masunda. Mr Amir agreed with the proposals made by Mr Butt.

- On March 1, 2011, the CAS acknowledged receipt of the appeals and sought to procure the views of Messrs Amir, Butt, and Asif on consolidation.

- On March 4, 2011, the ICC informed the CAS of its view that consolidation was necessary in order to avoid unnecessary cost and duplication. It also nominated Judge Robert Reid QC for appointment to the Panel.

- On March 3, 2011, Mr Amir informed the CAS that he had no objection to consolidation.

- On March 7, 2011, Mr Asif requested the CAS to stay proceedings while the criminal proceedings against him were concluded, in part because evidence gleaned during the criminal prosecution might be relevant for his CAS appeal.

- On March 16, 2011, the ICC informed the CAS that it did not object to Mr Asif's application for a stay but argued that Mr Asif's appeal should be consolidated with those of Messrs Amir and Butt and on that basis, submitted that if Mr Asif's request for a stay was granted, all three appeals should be stayed.

- On March 21, 2011, Mr Butt informed the CAS that he objected to Mr Asif's application for a stay insofar as it meant that his appeal would be delayed as a result of consolidation.

- On March 29, 2011, Mr Amir informed the CAS of his view that there were no valid grounds for a stay.

- On March 30, 2011, the CAS Court Office proposed to Messrs Butt, Asif, and Amir that Mr Asif's appeal would be stayed, while the appeals by Messrs Butt and Amir would be consolidated and proceed according to the standard CAS procedure.

- On April 4, 2011, Messrs Butt and Amir informed the CAS that they agreed with the CAS Court Office's proposal.

- Also on April 4, 2011, the ICC informed the CAS of its view that the CAS Court Office's proposal did not address its submission that wasted costs would be incurred if all of the proceedings were not consolidated. It argued that if the appeals by Messrs Butt and Amir were allowed to proceed, then their right of appeal to the CAS should be exhausted (i.e., if additional evidence became available from the criminal proceedings, that would not give rise to a new right of appeal to the CAS).

- On April 6, 2011, Mr Asif informed the CAS that he objected to the CAS Court Office's proposal on the basis that it was inefficient for appeals by Messrs Butt and Amir to proceed now and then potentially be repeated after conclusion of the criminal proceedings. Mr Asif also informed the CAS that following discussion with counsel for Messrs Butt and Amir, all three had agreed to nominate Romano Subiotto QC to the Panel.

- On April 21, 2011, Mr Butt informed the CAS that, in his view, his appeal should be allowed to proceed now and if additional evidence came to light during the criminal proceedings, a further appeal against the CAS decision should be permitted. If, however, such additional avenue of appeal were not available, Mr Butt agreed to stay the proceedings pending resolution of the criminal case. On April 22, 2011, Mr Amir informed the CAS that, in essence, he agreed with the submissions of Mr Butt.

- On May 6, 2011, the CAS informed Messrs Butt, Asif, and Amir that an appeal of the CAS decision would lie only to the Swiss Federal Tribunal.

- On May 16, 2011, Mr Butt informed the CAS that he was content for the CAS appeal to be stayed until the conclusion of his criminal trial.

- On May 17, 2011, Mr Amir informed the CAS that he was content for the CAS appeal to be stayed until the conclusion of the criminal proceedings.

- On May 23, 2011, the CAS informed Messrs Butt, Amir, and Asif that the appeals would be stayed pending the outcome of the criminal proceedings in the United Kingdom pursuant to Article R32 of the Code of Sports-related Arbitration (the "CAS Code").

- On January 5, 2012, Mr Asif communicated to the CAS that he had appointed new counsel. He also informed the CAS that he wished to proceed with his appeal and submitted additional grounds of appeal.

- On January 10, 2012, Mr Asif informed the CAS that he wished his appeal to be kept separate from the appeals by Messrs Butt and Amir and that the proceedings should be suspended pending his appeal against criminal conviction and sentence.

- On January 15, 2012, Mr Butt informed the CAS that he was happy for his appeal to proceed and that contrary to his originally filed Statement of Appeal, he would be appealing only against sanction (i.e., he withdrew his claim against liability).

- On January 19, 2012, Mr Amir withdrew his appeal against liability.

- On January 19, 2012, Mr Butt informed the CAS that he was content for his appeal to be adjourned pending Mr Asif's appeal against his criminal conviction and sanction.

- On January 24, 2012, the ICC informed the CAS that it had no objection to these appeals proceeding or being stayed pending resolution of Mr Asif's appeal against his criminal conviction and sentence. However, it objected strongly to the proposal by Mr Asif that the proceedings not be consolidated.

- On January 27, 2012, Mr Asif reiterated to the CAS that he did not want his appeal against the Determination to be heard alongside the appeals by Messrs Amir and Butt.

- On February 14, 2012, Mr Amir withdrew his appeal against sanction.

- On February 15, 2012, the CAS informed the other parties of Mr Amir's withdrawal and requested that the ICC comment on Mr Asif's request to have his appeal heard separately from Mr Butt's.

- On February 20, 2012, the ICC confirmed to the CAS that it objected to the appeals being heard separately.

- On July 24, 2012, Mr Asif asked the CAS to recommence his appeal proceedings.

- On July 27, 2012, the CAS invited the ICC to respond to Mr Asif's request.

- On August 3, 2012, the ICC reaffirmed to the CAS its view that the appeals by Messrs Butt and Asif should be consolidated.

- On August 8, 2012, Mr Asif's counsel responded to the ICC's letter and stated *"if it be the case that Mr Butt's CAS appeal is limited only to sanction, then I would not object to the respective appeals being heard together"*.

- On August 22, 2012, the CAS informed Messrs Butt and Asif of its understanding that the parties agreed that the appeals could be heard together and that the panel would comprise Romano Subiotto QC (nominated by the Players), Judge Robert Reid QC (nominated by the ICC), and a President to be appointed by the Division President of the CAS. The CAS also requested that Counsel confer with a view to agreeing the procedural timetable.

- On November 6, 2012, Mr Butt submitted his appeal brief to the CAS, in which he amended his request for relief reflecting the fact that he was no longer pursuing an appeal against liability – his relief was limited to an appeal against sanction.

- On November 8, 2012, Mr Asif submitted his appeal brief to the CAS.

- On December 14, 2012, the CAS circulated to Messrs Butt and Asif and the ICC Mr Graeme Mew's acceptance and statement of independence, in which he disclosed that his firm's Dubai office had in the past provided local advice to the ICC in connection with a non sport-related matter. The parties were reminded of Article R34 of the CAS Code. None of the parties objected to Mr Mew's appointment in this matter.

- On January 4, 2013, the ICC submitted its answer to Mr Butt's appeal brief with exhibits.

- On January 4, 2013, Mr Asif submitted to CAS his revised appeal brief and bundle of exhibits.

- On January 9, 2013, the CAS informed Messrs Butt and Asif and the ICC of the constitution of the Panel as follows: Mr Graeme Mew (President); Mr Romano F. Subiotto QC and Judge James Robert Reid QC (Arbitrators).

- On January 17, 2013, the ICC submitted to the CAS its answer to Mr Asif's appeal brief.

- On January 25, 2013, the parties' counsel had a conference call with the President of the Panel during which Mr Butt's counsel sought to introduce additional evidence. He submitted a skeleton argument in support of his submission on the same day.

- On January 31, 2013, the ICC submitted a response to Mr Butt's application for permission to introduce late evidence. The ICC opposed the application.

- On January 31, 2013, the ICC submitted a signed version of the Order of Procedure in the Butt and Asif appeals.

- On February 1, 2013, the CAS advised Mr Butt that the Panel had rejected Mr Butt's application to introduce late evidence.

- On February 4, 2013, Mr Asif signed the Order of Procedure.

- On February 4, 2013, Mr Butt signed the Order of Procedure.

- The hearings took place on February 7 (for Mr Asif) and February 8 (for Mr Butt). At the close of the hearing, the parties confirmed that they were satisfied as to how the hearing and the proceedings were conducted.

- In addition to the Panel, Ms Louise Reilly, Counsel to the CAS; Mr Brent Nowicki, Counsel to the CAS; and Mr Ruchit Patel, the following people attended the hearing: Mr Butt; Mr Yasin Patel, Barrister; Mr Jonathan Martin, Barrister; Mr Amer Rahman, Lawyer; Mr Awais Javed, Lawyer; Mr Daniel Rajah, Lawyer; Ms Tahera Patel, Lawyer; Mr Farook Hassan, Clerk; Mr Iain Higgins, Head of Legal, ICC; and Messrs Jonathan Taylor and Jamie Herbert, Bird & Bird LLP. No witnesses or experts were called.

IV. SUBMISSIONS OF THE PARTIES

40. Mr Butt does not contest the liability findings of the Tribunal. He does, however, request a reduction to his sanction. Mr Butt's grounds of appeal may be summarised as follows:

- The Panel is not confined by the minimum sanction period set out in the ICC Code and has the discretion to impose a sanction of less than 5 years of ineligibility; and

- The Panel should impose a sanction of less than 5 years ineligibility because the sanction imposed was both irrational and disproportionate.

41. Mr Butt requests the Panel to *"set aside the Tribunal's sanction for the above offence (at paragraph 240 of the [D]etermination) of ten year's ineligibility, five of which are suspended on condition that he commits no further breach of the [ICC] Code and that he participates under the auspices of the Pakistan Cricket Board in a programme of anti-corruption education* ***and*** *that the CAS substitute a sanction of a period of ineligibility of less than five years"*.

42. The ICC contended that the minimum sanction mandated was precisely that and there was no jurisdiction to impose a sanction lower than the minimum. It further submitted that, in any event, the sanction was neither irrational nor disproportionate.

43. The ICC requests the Panel:

> *"to dismiss Mr Butt's appeal in its entirety;*
>
> *to order Mr Butt to pay all of the CAS's costs of this meritless appeal, in accordance with CAS Code R.64.5; and*
>
> *to order Mr Butt to contribute to the significant costs that the ICC has been forced to incur in defending this meritless appeal, again in accordance with CAS Code R.64.5".*

V. ADMISSIBILITY

44. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or 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".

45. Section 7.3 of the ICC Code states that:

"The deadline for filing an appeal to CAS shall be twenty one (21) days from the date of receipt of the written reasoned decision by the appealing party …".

46. In this case, Mr Butt's statement of appeal was filed on February 25, 2011 (*i.e.*, within 21 days of receipt of the decision appealed against). The Panel is satisfied that Mr Butt's appeal is admissible.

VI. JURISDICTION

47. Article R47 of the Code provides as follows:

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

48. The pertinent excerpts from Section 7 of the ICC Code are set out below:

"Article 7 - Appeals

The following decisions made under the Anti-Corruption Code may be challenged by the ICC or the Player or Player Support Personnel who is the subject of the decision (as applicable) solely by appeal to the CAS as set out in this Article 7

7.1.3 a decision that an offence under the Anti-Corruption Code has (or has not) been committed".

49. The jurisdiction of the CAS is not disputed and was confirmed by the parties' signing of the Order of Procedure.

VII. APPLICABLE LAW

50. Article R58 of the Code provides as follows:

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

51. Section 7.3.3 of the ICC Code states that in all appeals to CAS pursuant to Article 7, *"the governing law shall be English law and the appeal shall be conducted in English, unless the parties otherwise agree"*.

52. The parties have not objected to the application of English law in the CAS proceedings. The Panel will therefore apply the ICC Code, and to the extent necessary, English law.

VIII. MERITS

53. Mr Butt does not contest the liability findings of the Tribunal. He does, however, request a reduction to his sanction.

54. Mr Butt submits that the Panel is not confined by the minimum sanction period set out in the ICC Code and that it has the discretion to impose a sanction of less than five years of ineligibility. He also submits that the Panel should impose a sanction of less than five years ineligibility because the sanction imposed was both irrational and disproportionate. Each of these limbs is considered in turn below.

A. Discretion to impose a sanction that is less than the minimum sanction set out in the ICC Code

55. Consistent with CAS and other sporting authority jurisprudence, the Panel considers that, as a general rule, significant deference should be afforded to a sporting body's expertise and authority to determine the minimum level of a sanction required to achieve its strategic imperatives: see CAS 2006/A/1165, paragraph 16 (*"The IAAF has great experience and is at the forefront of the fight against doping in athletics and its position is that it is important to have an effective penalty against athletes that do not provide adequate whereabouts information, "pour encourager les autres". It is not the CAS Panel's role to second-guess the IAAF's decision or policy in this regard");* CAS 2009/A/2012, paragraph 50 (*"Indeed, the WADC's official comment to Article 10.5.1 and 10.5.2 unequivocally states that the mitigation of mandatory sanctions is possible "only in cases where the circumstances are truly exceptional and not in the vast majority of cases". The comment shows the intention of the WADC to apply the exception in a very restrictive manner"*); and FIBA Appeals Tribunal AC 2007-2, August 27, 2007, pp 10-11 (*"[The arbitrator] particularly cannot substitute the federation rules with his personal sense of justice … sports bodies can limit in their rules the circumstances to be taken into account when fixing sanctions and thereby also restrict the application of the doctrine of proportionality"*).

56. The CAS's decisional practice reveals that that general rule can only be deviated from in exceptional circumstances. In CAS 2006/A/1025 ("Puerta"), the CAS found that:

- Mr Puerta accidentally and inadvertently ingested a drop of his wife's pre-menstrual medication containing a Prohibited Substance which was obtainable in Argentina and other countries over-the-counter[2];

- Whether taken individually or cumulatively, Mr Puerta's degree of fault or blame (or negligence) was very small[3] because he did not ingest or use a medicine consciously[4]; and

- Mr Puerta was not a cheat and the fact that he was found to have breached anti-doping regulations was more the result of bad luck than fault or negligence on his part[5].

57. The Panel in *Puerta* therefore considered that, in the circumstances of the case, the imposition of an eight year period of ineligibility would not be just and proportionate and that it therefore had the power to amend the minimum sentence of the World Anti-Doping Code[6]. The Panel was keen to stress that its judgment was not intended to "open the floodgates" to a tidal wave of decisions in which anti-doping tribunals exercise discretion rather than apply the World Anti-Doping Code[7]. The judgment was intended to fill a lacuna in the World Anti-Doping Code, which according to that Panel was a situation likely to transpire only in the rarest of circumstances[8].

58. The case of *Bradley v. Jockey Club* [2004] EWHC 2614 suggests that the position is similar under English law. In that case, the English High Court held (at paragraph 46):

> *"The importance of the court limiting itself to a supervisory role of the kind I have described is reinforced in the present case by the fact that the Appeal Board includes members who are knowledgeable about the racing industry and are better placed than the court to decide on the importance of the rules in question and the precise weight to be attached to breaches of those rules. (I treat the Appeal Board as the primary decision-maker since, although its function under Appendix J to the Rules of Racing was largely a review function, it found that the penalty imposed by the Disciplinary Committee was disproportionate and, as it was empowered to do, it substituted a penalty of its own as a proportionate penalty)".*

59. The Court of Appeal confirmed the lower court's finding (Bradley v. Jockey Club [2005] EWCA Civ 1056, paragraph 20):

> *"Mr Glen developed his arguments on proportionality, both in his reply and in oral argument to us. His starting point was to contend that this court was as well placed to consider proportionality as the Appeal Board. I do not agree. Professional and trade regulatory and disciplinary bodies are usually*

2 Puerta, paragraph 11.7.16.
3 Puerta, paragraph 11.7.22.
4 Puerta, paragraph 11.7.34.
5 Puerta, paragraph 11.7.22.
6 Puerta, paragraph 11.7.34.
7 Puerta, paragraph 11.7.28.
8 Puerta, paragraph 11.7.29.

> *better placed than is the court to evaluate the significance of breaches of the rules or standards of behaviour governing the professions or trades to which they relate".*

60. Mr Butt sought to distinguish the case of *Bradley* on the basis that it relied on *Edore v Secretary of State for the Home Department* [2003] EWCA Civ 71, which had been overturned by a subsequent decision of the House of Lords, a higher court, in *Huang FC and Kashmiri FC v. Secretary of State for the Home Department* [2007] UKHL 11 ("Huang"). The Panel is not persuaded by this argument. In *Huang*, the House of Lords held that based on Section 65 of the *Immigration and Asylum Act 1999*, an appellate immigration authority must decide, if requested to do so by an appellant, whether a primary decision complies with the *European Convention on Human Rights* and not simply whether the decision-maker misdirected himself, acted irrationally, or was guilty of procedural impropriety. In so holding, the House of Lords displaced *Edore* insofar as that judgment sought to limit the role of the appellate authority to deciding only whether the decision taken was within the decision-maker's discretion. The Panel does not see how the scope of the reversal in *Huang* detracts from the principle enunciated in *Bradley*, which is that professional bodies are usually better placed than a court to evaluate the significance of breaches of the rules or standards of behaviour governing the professions or trades to which they relate (which finding was made by the Court of Appeal without reliance on *Edore*).

61. It is therefore clear, both from *Puerta* and under English law, that a CAS panel only has authority to reduce a minimum sanction in exceptional circumstances (*e.g.*, where that sanction would not be just or proportionate). See also CAS 2010/A/2268, paragraphs 132 *et seq*.

62. While this Panel accepts Mr Butt's submissions that a CAS panel is also entitled to modify a minimum sanction which is imposed irrationally on the basis that such a situation would also be exceptional, the threshold for showing irrationality is high, namely it must be shown that the decision taken was obviously or self-evidently unreasonable or perverse: CAS 2008/A/1574, award of July 7, 2008, itself citing *Associated Provincial Picture House Ltd. v. Wednesbury Corporation*, [1948] 1 KB 223.

63. Accordingly, although the Panel does have the discretion to impose a sanction that is less than the minimum sanction set out in the ICC Code, it will only exercise that discretion in exceptional circumstances (*e.g.*, where the sanction is unjust, disproportionate, or irrational).

B. Irrationality

64. Mr Butt submits that the Tribunal's sanction is irrational because a more serious offence under the ICC Code carries a lesser sanction. Articles 2.1.1 and 2.2.3 of the ICC Code respectively state:

> *"Fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event … shall amount to an offence by such Participant under the Anti-Corruption Code"* (Article 2.1.1).

…

"Ensuring the occurrence of a particular incident in an International Match or ICC Event, which occurrence is to the Player or Player Support Personnel's knowledge the subject of a Bet and for which he/she expects to receive or has received any reward … shall amount to an offence by such Participant under the Anti-Corruption Code" (Article 2.2.3).

65. Mr Butt argues that it is irrational for him to have been sanctioned for five years (the minimum sanction under Article 2.1.1 of the ICC Code) in circumstances where Article 2.2.3 of the ICC Code, which concerns betting, carries a minimum period of ineligibility of only two years and requires the additional (potentially aggravating) elements of (1) knowledge that the occurrence ensured was the subject of a Bet, and (2) an expectation or receipt of reward. Although it was not his original submission, Mr Butt argues that such irrationality is underlined because the facts of this case could apply equally to either Article 2.1.1 or Article 2.2.3 of the ICC Code and indeed Mr Butt was charged with both offences.

66. A critical element of Mr Butt's revised submission is that it is irrational that a more serious infringement under the ICC Code (the one under Article 2.2.3 of the ICC Code) carries a lesser sentence. The argument would fail if it were shown that an infringement under Article 2.2.3 of the ICC Code is in fact less serious than an infringement under Article 2.1.1 of the ICC Code (on the basis that it is rational to have a lesser sentence for an infringement that is less grave).

67. The ICC's position is that Articles 2.1.1 and 2.2.3 of the ICC Code were intended to capture distinct types of conduct, the former improper "match fixing" or "spot fixing" and the latter betting that was not necessarily improper (the ICC submitted that Article 2.2.3 of the ICC Code was designed to capture betting on aspects that were not directly relevant to the outcome of the game such as how many players would emerge after tea wearing short-sleeved jumpers). According to the ICC, the element of "impropriety" in Article 2.1.1 of the ICC Code justifies the lengthier sanction.

68. Although the drafting of the clause fails to make this distinction patent and has been the source of confusion and uncertainty in this case, the Panel is satisfied that Articles 2.1.1 and 2.2.3 of the ICC Code capture distinct infringements of varying gravity. The Panel understands that the ICC considers "match fixing" and "spot fixing" to be a more serious infringement than betting on aspects of the match that are not directly relevant to the outcome of the game, but that such betting is nonetheless an activity which the ICC wishes to purge. Although the drafting of these provisions could more clearly convey the ICC's intent (which the ICC might consider amending during the next review of its Code), the Panel is nevertheless persuaded that Mr Butt's sanction is not irrational because the sanction for Article 2.2.3 of the ICC Code is intended to cater for offences which might be less serious.

69. For completeness, the Panel notes that it is not, in any event, persuaded by the argument that absent the ICC's clarification, the sanction on Mr Butt would be irrational. As stated above, significant deference should be shown to the ICC in developing sanctions to meet its strategic priorities. That deference should only be deviated from on grounds of irrationality where the

decision to sanction or the length of the sanction was self-evidently unreasonable or perverse. For the following reasons, the Panel is not satisfied that that threshold has been satisfied in this case:

- First, the Panel does not consider unreasonable or perverse a minimum sanction of 5 years ineligibility for engaging in corruption in breach of Article 2.1.1 of the ICC Code. Such a sanction is significantly shorter than equivalent sanctions in other sports. Indeed, the CAS has previously upheld life bans for acts of corruption: CAS 2009/A/1920, award dated April 15, 2010 (upholding a life ban on a club president who was involved in an attempt to fix a match); CAS 2010/A/2172, award dated April 15, 2010 (upholding a life ban on a referee for failing to report an approach made to him to fix a match); CAS 2011/A/2490, award dated March 23, 2012 (upholding a life ban imposed on a tennis player for offering other players bribes to lose matches); and CAS 2011/A/2621, award dated September 5, 2012 (upholding a life ban on a tennis player for offering a fellow athlete a bribe to lose the first set of a match). Accordingly, in the Panel's view, the sanction imposed on Mr Butt is rational where, as here, the conduct had the potential to, or did, impair significantly the credibility of the game.

- Second, the Panel does not consider unreasonable or perverse a minimum sanction of 2 years ineligibility for engaging in betting in breach of Article 2.2.3 of the ICC Code. That is a subjective decision within the ICC's discretion and to be made by reference to its strategic priorities.

- Third, the Panel does not consider it necessarily unreasonable or perverse that the ICC considers that an offence of betting should carry a lower minimum sanction than an offence of corruption. The Panel notes that ICC is free to impose five year sanctions under Article 2.2.3 of the ICC Code, indicating that it has foreseen cases where betting can be as serious as certain corruption cases but considers the ICC is in principle free to decide subjectively the minimum sanctions it wishes to impose for specific conduct by reference to a number of factors, including the long and sad history of corruption in cricket.

70. Taking these factors into account, the Panel does not consider the sanction imposed on Mr Butt to be irrational. This ground of appeal is therefore dismissed.

C. Proportionality

71. Mr Butt contends that the Panel should reduce his sanction on the basis that Tribunal imposed a sanction, which was evidently and grossly disproportionate. In support of his contention, Mr Butt submits that:

- This was a case of spot fixing, not match fixing (spot fixing is, according to Mr Butt, significantly less serious and longer periods of ineligibility must be reserved for match fixing);

- The spot fixing was limited to three "no balls," which had little or no effect on the course or result of the match;
- The "no balls" would not have been bowled had it not been for the undercover operation by the NoTW and the subsequent pressure caused by Mr Khan;
- The "prime mover" was Mr Majeed, a charismatic and persuasive individual;
- Pakistani players were uniquely exposed and vulnerable to spot fixing (and the financial inducements which accompany it), because (1) their earnings were lower than certain other players, (2) they were not permitted to play in the Indian Premier League, and (3) Pakistan was unable to host home games due to the 2009 terrorist attacks in Lahore;
- He has an exemplary disciplinary record;
- He is an ambassador for charities and his local cricket club;
- The sanction effectively spells the end of his career and he knows no other vocation;
- He has suffered a great deal (he has lost a significant amount of money in sponsorship and legal fees, has missed playing in World Cups and Test Matches, has tarnished his reputation irremediably, and has brought great shame on his family);
- He has served a jail sentence in the U.K.; and
- He withdrew his appeal on liability.

72. At the Hearing, Mr Butt also submitted that it had not been shown that he gained financially from the spot fixes. He also emphasised the extent of his suffering (*e.g.*, his jail term meant that he missed the birth of his son).

73. As explained above, the CAS's starting position is that significant deference should be afforded to ICC's expertise and authority to determine the minimum level of a sanction required to achieve its strategic imperatives (see CAS 2006/A/1165, paragraph 16; CAS 2005/A/830, paragraph 50; and Kambala & WADA v. FIBA, FIBA Appeals Tribunal, pp 10-14) Consistent with the principles established in *Puerta*, the Panel will only deviate from that minimum level of sanction where the case gives rise to exceptional circumstances (including where the sanction is disproportionate).

74. Mr Butt's sanction is, in effect, five years in duration (provided that he does not infringe again and complies with the condition as to participating in an educational programme). In the Panel's view, this sanction could reasonably be described as lenient given that:

- Mr Butt was Captain of the Pakistan Test Match cricket team at the time and had a responsibility as role model;

- Sanctions for spot fixing in other cricket cases have involved lifetime bans (though the facts were slightly different, the sanctions imposed on Mervyn Westfield and Danish Kaneria by the England and Wales Cricket Board were lifetime bans: *ECB v. Kaneria & Westfield*, Decision of the Disciplinary Panel of the Cricket Discipline Commission of the ECB in the case of Danish Kaneria and Mervyn Westfield dated June 22, 2012, paragraph 14); and

- The Tribunal's unchallenged finding was that Mr Butt was the orchestrator or *"ring master"* of the "no balls" during the Lord's Test.

75. Unlike in *Puerta*, the Panel does not see any reason why Mr Butt's blame or culpability in relation to the Lord's Test was the result of bad luck or accident. The Panel's view that the sanction is lenient remains undisturbed by the arguments advanced by Mr Butt above and is reinforced *inter alia* by the following points:

- First, in relation to the criminal sentence, the Determination makes clear that the Tribunal did consider the possibility of a criminal conviction during sentencing (*"Mr Butt now lived under the shadow of a criminal trial"*) and Mr Justice Cooke imposed a more lenient prison term than he was otherwise minded to do precisely because the ban imposed by the ICC was *"considerable punishment for a man in [Mr Butt's] position"*[9]. Mr Butt has therefore already had the benefit of a reduction in sentence as a result of being charged with separate offences for the same factual matrix. The Panel does not see any reason why he should have such benefit twice.

- Second, the Tribunal has already taken into account many of the mitigating factors which Mr Butt repeated before the Panel (*e.g.*, the Tribunal recognised that (1) this was a case of spot fixing, which is less serious than match fixing, and limited to only three "no balls," which did not affect the outcome of the game[10], (2) Mr Majeed preyed on the player's youth, inexperience, and desire for wealth and glamour[11], (3) Mr Butt enjoyed a good previous disciplinary record[12], (4) the damage to cricket was done in

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9 Sentencing remarks of Mr Justice Cook in *R v Majeed, Butt, Asif, & Amir*, Southwark Crown Court, November 3, 2011, paragraph 28.

10 Determination, Paragraph 223 *("The charges before us, we repeat, are limited to a single Fix in the case of Mr Amir and Mr Asif, and to two Tests in the case of Mr Butt, and, in his case, they are in reality part of the same basic transaction. The evidence suggests that the bowling of the deliberate no balls was intended basically as a trial run to show what might, without paradox be called good bad faith on the part of Mr Majeed. Its purpose was not to influence any outcome, or even, basically to serve as the basis for betting about which, on the evidence before us, the players are not proven to have known about. Rather, it was to show to MK that Mr Majeed was not simply bragging when he said h had a number of Pakistani players in his pocket. In the result, the three no balls bowled had no influence whatever on the game, in which in particular Mr Amir greatly distinguished himself, and there is no evidence that the three players did not wish to repeat their success in the Oval Test").*

11 Paragraph 224 of the Determination *("As we have already said, we have not heard Mr Majeed's side of the story. Nevertheless, we are entitled to draw inferences on the uncontroverted evidence before us. Breezy, confident, someone used to getting things done; friendly, engaging, the man who promised in his capacity as their agent, actual or putative, formal or informal, to open endless doors to wealth and fame for them, the three players were simply no match for him. The evidence suggests strongly that he consciously preyed on their youth and inexperience to lure them into a world, half real half fantasy, of constantly increasing wealth and glamour").*

12 Paragraph 225 of the Determination (*"We must also note that all three players enjoy a good previous disciplinary record"*).

part by the NoTW[13], (5) that Pakistani players were particularly susceptible to pressure[14], and (6) Mr Butt had no life or prospects without cricket[15]). The Panel does not see any compelling exceptional reason to apply now relatively more weight to these factors than the Tribunal did.

- Third, the Panel does not find that the withdrawal of the appeal on liability at a late stage in the proceedings constitutes an exceptional circumstance permitting the Panel to modify the minimum sanction (but recognises that an admission would have qualified for mitigation under the ICC Code had Mr Butt done so earlier).

- Fourth, although it has not been shown beyond reasonable doubt that Mr Butt received money from Mr Majeed for his role in the spot fix, the Panel notes that an infringement of Article 2.1.1 of the ICC Code does not require a player to receive gain financially. The question to be answered is whether Mr Butt fixed, contrived in any way, influenced improperly, or was a party to any effort to fix, contrive in any way, or influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event. In other words, a player who is involved in a fix breaches Article 2.1.1 notwithstanding that he does not benefit financially from doing so. Accordingly, the Panel does not consider the absence of financial gain to be determinative in sanctioning the infringement for which he has been found liable.

- Finally, while the Panel has sympathy for Mr Butt's suffering, it noted that Mr Butt made no express apology for his actions or for the detriment caused to the game. In those circumstances, a plea for leniency has less resonance.

76. Accordingly, the Panel is not persuaded that the sanction imposed by the Tribunal was disproportionate. It is also not persuaded that any of the mitigating factors advanced by Mr Butt qualify as exceptional circumstances, which would enable the Panel to modify the minimum sanction, which has effectively been applied. This ground of appeal is therefore dismissed.

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13 Paragraph 229 of the Determination (*"The following considerations, were urged upon us by Counsel for Mr Butt, Mr Bajwa who made powerful submissions as to why, if we could reduce the minimum limit, we should. He said that match fixing was less serious than spot fixing; that the degree of damage to the image of cricket in this instance resulted, at least in part, from the NOTW highlighting of the fruits of its sting operation; that Pakistani players were peculiarly vulnerable to pressure, given their country's present inability to host international matches and the consequent impact on the players relatively modest – in terms of modern sport earnings; that Mr Butt now lived under shadow of a criminal trial, and with the shame of our determination; and finally that he had in truth no life or prospects apart from cricket. All these submissions were adopted by Mr Cameron and Mr Karim on behalf of Mohammad Asif and Mohammed Amir, and in substantial part we accept them"*).

14 Ibid.

15 Ibid.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Salman Butt on February 25, 2011 is dismissed.

2. The decision of the ICC Tribunal issued on February 5, 2011 is confirmed.

(…)

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