**Arbitration CAS 2020/A/6941 Youness Bengelloun v. Fédération Internationale de Football Association (FIFA) & PFC CSKA-Sofia, award of 10 November 2021**

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Manfred Nan (The Netherlands); Mr Patrick Lafranchi (Switzerland)

*Football*
*Disciplinary proceedings for failure to comply with a previous FIFA decision*
*Applicability of national insolvency law*
*Sporting succession of clubs*
*Sporting succession of clubs in disciplinary cases*
*Application of Art. 64 FDC in bankruptcy proceedings*
*Due diligence of the player*
*Determination of the due diligence of a player in national bankruptcy proceedings preventing the admission of amounts due for breach of the employment contract*

1. **Insolvency proceedings are not governed by the various regulations of FIFA, but are solely governed by the law of the country where the insolvency is established. In accordance with article R58 of the CAS Code, it is therefore appropriate to apply that national law to the dispute. The application of the national law is nevertheless strictly limited to the insolvency proceedings insofar as the national law contravenes the application of the various regulations of FIFA.**

2. **Sporting succession of clubs is to be decided on a case-by-case basis by taking into account the circumstances of each individual case. It can occur even in the absence of formal legal links between the two entities (such as the purchase of the former's assets or federative rights) and, as such, has to be distinguished from legal succession and made subject to the test of sporting criteria only. This reflects to a large extent the fact that, on the one hand, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other hand, the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. which distinguish it from all the other clubs. Hence, the continuity and permanence over time of the sports institution prevails over the change of the entity that manages it.**

3. **The concept of sporting succession of clubs should not only apply in cases regarding employment-related disputes decided on the basis of the FIFA Regulations on the Status and Transfer of Players (RSTP), but equally in cases concerning the application of Article 64 of the FIFA Disciplinary Code (FDC), considering that Article 64 FDC seeks precisely to ensure compliance with FIFA decisions on employment-related**

**disputes decided on the basis of the FIFA RSTP.**

4. **In principle, bankruptcy proceedings do not exclude the application of Article 64 FDC on a non-compliant party that is the successor of the bankrupt club.**

5. **A creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claims. Therefore, it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owed. Yet, there is no blanket rule, and this assessment should be made based on the specific circumstances of each particular case. In particular, (a) there must be at least a *"feasible theoretical possibility"* for the creditor to receive the sum of his credit in case he had duly claimed for it in the bankruptcy proceedings; and (b) it needs to be established that the recovery of the credit would have been feasible via the bankruptcy proceedings; in other words, there must be certainty that, in case the creditor had acted otherwise, the successor of the original debtor would not have to face the consequences of non-compliance with the decision of the FIFA Dispute Resolution Chamber (DRC).**

6. **Bulgarian legislation or legal authorities prevent the admission of amounts due for breach of the employment contract in the national bankruptcy proceedings. As a result, it is impossible for a creditor to ensure full enforcement of a FIFA DRC decision allowing an amount as compensation for such breach via the Bulgarian bankruptcy proceedings and, therefore, it is impossible for him to prevent the debtor's failure to comply with the FIFA DRC decision. As the peculiarities of this national bankruptcy system do not allow a *"feasible theoretical possibility"* to receive any amount related to the compensation awarded by the final and binding FIFA DRC decision, there is no need to ascertain whether the conduct of the creditor was negligent or not in asserting his claim against the debtor in the context of the national bankruptcy proceedings.**

## I. PARTIES

1. Mr. Youness Bengelloun is a French professional football player (the "Appellant" or the "Player"). He is currently retired.

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

3. PFC CSKA-Sofia is a football club with its registered office in Sofia, Bulgaria (the "Second Respondent" or "PFC CSKA-Sofia"). PFC CSKA-Sofia is a member of the Bulgarian Football Union ("BFU"), which has been affiliated to FIFA since 1924.

4. The Player, FIFA and PFC CSKA-Sofia are hereinafter jointly referred to as the "Parties".

## II. FACTUAL BACKGROUND

### A. Background Facts

5. Below is a summary of the factual background of the case based on the Parties' oral and written submissions on the file and the relevant documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While 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.

6. On 23 July 2012, the Player signed a professional contract with the football club PFC CSKA Sofia ("CSKA" or the "Old Club") valid until 30 June 2015 against a monthly salary of EUR 12,600 plus performance bonus and other benefits (the "Employment Contract").

7. On 26 December 2012, the Player lodged a claim against CSKA with the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting, *inter alia*, payment of outstanding salaries in the amount of EUR 58,367.75 and EUR 400,032.25 corresponding to compensation for breach of the Employment Contract by CSKA without just cause.

8. On 21 May 2015, the FIFA DRC partially accepted the Player's claim and ordered CSKA to pay to the Player the amount of EUR 51,566 plus 5% interest *p.a.* corresponding to outstanding salaries and EUR 355,730 plus 5% interest *p.a.* corresponding to compensation for breach of contract (the "FIFA DRC Decision"). The FIFA DRC Decision became final and binding.

### B. Proceedings before the FIFA Disciplinary Committee

9. On 15 July 2015, the Player informed FIFA that CSKA had failed to comply with the terms of the FIFA DRC Decision and requested the opening of disciplinary proceedings before the FIFA Disciplinary Committee ("FIFA DC") against CSKA in accordance with Article 64 of the FIFA Disciplinary Code ("FDC").

10. After the end of the 2014/2015 season, CSKA was relegated in the amateur level due to financial difficulties.

11. On 31 July 2015, the CSKA management requested the initiation of insolvency proceedings for the club before the Sofia City Court.

12. On 2 September 2015, the FIFA DC sent a letter to the Player stating that *"We (…) wish to provide you, for your information and any action you may deem appropriate, with a copy of the documentation that we received in connection with the club PFC CSKA Sofia. Please note that we will revert to you in due course and keep you informed of any further developments in this regard"*. Attached to this letter was a

letter dated 26 August 2015 and signed by the Executive Director of CSKA stating that CSKA *"is commencing a procedure of insolvency and at the present time is unable to fulfil its financial commitments regulated with the above said decisions (…)"*.

13. On 2 October 2015, the Sofia City Court passed its decision 1581 and declared the insolvency of CSKA, initiated a *"procedure of bankrupt"*, appointed a temporary trustee in bankruptcy and summoned the first meeting of creditors.

14. The Player was registered to a list of creditors in the CSKA bankruptcy proceedings dated 2 October 2015 signed by the temporary trustee for an amount of BGN 992,720.63.

15. After the first meeting of creditors, the temporary trustee sent a notice to inform known foreign creditors of the insolvency proceedings and invite them to submit their claims in writing before the bankruptcy Sofia court *"up to one month after the entry into the Commercial register with the Registry Agency of the decision for the institution of the bankruptcy proceedings, as the creditor shall indicate the grounds and amount of the claims privileges and security, legal seat and submit documentary evidence for its claims (Decision dated 02.10.2015 has been entered into the Commercial register on 5th October 2015). Claims which have been submitted after this date, but not later than two months upon expiration of the term, shall be entered in the list of submitted claims and shall be accepted wider the order provided by the law, but the creditor could not challenge the already accepted claim or the distribution made and shall be satisfied by the balance in the converted into cash property if there has been made distribution, as the additional expenses for the acceptance of his claim shall be borne by him. After the expiration of this term of all the claims, which have occurred until the date of institution of bankruptcy proceedings could not be submitted"*. The Player, being domiciled in France at the time, did not receive such notice.

16. The Player's claim was not registered in the Commercial Register.

17. On 16 December 2015, the Secretariat to the FIFA DC informed the Player and CSKA by letter, that disciplinary proceedings were formally opened against CSKA in respect of a violation of Article 64 FDC and that the proceedings would be suspended until CSKA's liquidation process *"finalises in accordance with Bulgarian law"*. Attached to this letter was an undated letter signed by the Executive Director of the BFU informing FIFA on the specifics of the insolvency procedures under Bulgarian law, as well as a letter dated 7 October 2015 and signed by the same person informing FIFA that *"by decision No 1581 of October 2, 2015, the Sofia City Court declared the insolvency of PFC "CSKA" Sofia and fixed the date of insolvency – December 31, 2014. (…)"* and enclosing a copy of said decision.

18. On 10 May 2016, the Sofia City Court passed its decision 2837 and ruled on the claims admitted in the bankruptcy proceedings, the Player's claim not being among them.

19. In June 2016, PFC Litex Lovech, having been previously excluded from the national championship by the BFU due to disciplinary offences, changed its name to PFC CSKA-Sofia. PFC CSKA-Sofia was admitted to CSKA's home stadium and at the beginning of the 2016/2017 season (after only one season in the amateur level) was promoted into the "First Professional League", the top-tier division of professional football in Bulgaria.

20. On 13 July 2016, Mrs. Dora Mileva-Ivanova, the permanent trustee in the CSKA bankruptcy proceedings, informed FIFA about the status of the bankruptcy proceedings in relation to FIFA disciplinary proceedings initiated by another player, Mr. Civard Sprockel, against CSKA.

21. On 16 November 2016, the Player sent a letter to FIFA requesting that the disciplinary proceedings be continued and that PFC CSKA-Sofia be considered as one and the same entity as CSKA. The Player referred to the fact that he was registered on the list of creditors of the club in the national insolvency proceedings, providing an extract thereof.

22. On 16 June 2017, Mrs. Mileva-Ivanova published the "First partial appropriation account for distribution of funds" to CSKA creditors, the Player not being among them, amounting to BGN 7,835,367.50.

23. On 8 September 2017, the Secretariat to the FIFA DC acknowledged receipt of the Player's letter of 16 November 2016 and further stated that *"(…) we wish to inform the parties that we are closely investigating the current situation of the club PFC CSKA Sofia. In this sense, we would like to underline that we will inform you as soon as we have any new relevant information at our disposal"*.

24. On 13 September 2017, the General Secretary of the BFU wrote to FIFA that *"By decision No. 1584/09.09.2016, the Sofia City Court has declared PFC "CSKA" Sofia in bankruptcy and terminated that club's activity as well as the activity of all management bodies. It announced also the sale of all club property and the distribution of all funds received between the club creditors. On May 30, 2017, an auction for the sale of the entire property of the club, which was won for the amount of BGN 8 million (about EUR 4 090 000) was held. A breakdown has been prepared between the 143 creditors approved by the court. The Player Civard Sposkel* (sic) *is included in the list of creditors under No. 123 with an amount of BGN 19 853 (about EUR 10 150). After completing the procedure of a (possible) legal appeal by not satisfied creditors, this amount will be paid to the creditors according to the final distribution among them. According to Article 27, Paragraph 1, Item 2 of the BFU Statute, the membership of any club declared in bankruptcy shall be terminated. The termination of the membership of PFK "CSKA" Sofia is stated by a decision of the BFU Executive Committee that was adopted at a meeting on June 20, 2017. The decision of the BFU Executive Committee will be submitted for consideration by the BFU Congress, to be held in early 2018"*.

25. On 19 March 2018, the Player requested FIFA again, to execute the FIFA DRC Decision, this time against PFC CSKA-Sofia, since it was again playing in the highest division of the Bulgarian championship and, pursuant to CAS jurisprudence and FIFA practice, it should be considered as "sporting successor" of CSKA.

26. On 7 November 2019, the Sofia City Court passed its decision 5958 and allowed the trustee to pay the amounts listed in the 16 June 2017 list to the CSKA creditors.

27. On 22 January 2020, FIFA reopened the disciplinary proceedings against PFC CSKA-Sofia for potential breach of Articles 15 and 64 FDC.

28. On 5 February 2020, PFC CSKA-Sofia submitted its position denying that it was the sporting successor of CSKA as it is a separate legal entity that was created out of PFC Litex Lovech.

PFC CSKA-Sofia further submitted that the Player *"omitted to file a claim against CSKA and did not register himself in these bankruptcy proceedings"*.

29. On 7 February 2020, the Player replied to PFC CSKA-Sofia's submission denying its arguments.

30. On 12 February 2020, the FIFA DC passed its decision in this matter, dismissed all charges against PFC CSKA-Sofia and terminated the disciplinary proceedings (the "Appealed Decision").

31. On 20 March 2020, the grounds of the Appealed Decision were notified to the parties, determining inter alia the following:

*"(…)*

*a. Whether the new Club, PFC CSKA-Sofia, is liable for the debts incurred by the original Debtor*

*(…)*

*19. In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by the obligations of its predecessor, i.e. the "old" club, b) the "new" club took over the licence or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another. By the same token, a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the licence or federative rights from the "old" club.*

*20. Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. In particular, it is recalled that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities which operate it. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.*

*21. For the sake of completeness, the Member of the Committee wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that "The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

*(…)*

*26. In light of the aforementioned considerations, it was held that the fact that the new Club uses elements that constituted the identity of the original Debtor, combined with its intention to appear as the original Debtor, had to prevail over the arguments put forward by the new Club, such as its ownership, license, football teams*

*and legal entities being different from those of the original Debtor. It was therefore decided that the new Club was to be considered as the sporting successor of the original Debtor.*

*27. Having taken all the above into account and on the basis of the information and documentation at his disposal, the Member of the Committee decides to endorse the conclusions of the Chairman and the Deputy Chairman of the Disciplinary Committee and considers that there is no other alternative but to conclude that the new Club, PFC CSKA-Sofia, is to be regarded as the sporting successor of the original Debtor, PFC CSKA Sofia.*

*28. In this regard, the Member of the Committee notes that neither the original Debtor nor the new Club have complied with the DRC decision dated 21 May 2015 as neither club has paid the outstanding amounts to the Creditor.*

*29. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Member of the Committee concludes that, in principle, the sporting successor, i.e. the new Club, of a non-compliant party, i.e. the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2017 FDC.*

*b. Whether the new Club, PFC CSKA-Sofia, is responsible to pay the amounts imposed in the DRC decision*

*30. First and foremost, the Member of the Committee stresses that the original Debtor went bankrupt. In this context, and as established already by CAS, it appears relevant for the legal assessment of this case to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the new Club, i.e. whether the Creditor also contributed to create the breach of art. 64 of the 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed.*

*31. In this regard, the Member of the Committee first recalls that art. 64 of the 2017 FDC empowers the Disciplinary Committee to impose sanctions on a club that failed to respect a financial decision rendered by a body, a committee or an instance of FIFA or in a subsequent CAS award. In other words, a club will be sanctioned in the event it did not respect a financial decision by means of which it was ordered to pay a certain amount to another person (such as a player, a coach or a club).*

*32. Secondly, the Member of the Committee notes that, as mentioned above, CAS already discussed the possibility for the Disciplinary Committee to impose sanctions in accordance with art. 64 of the FDC on a new club that was considered as the successor of the bankrupt club. In particular, CAS decided that no disciplinary sanctions could be imposed on the new club, should the player fail to claim his credit in the bankruptcy proceedings of the former/bankrupt club.*

*33. Bearing the above in mind, the Member of the Committee shares CAS conclusion that there is no certainty that a creditor will receive the outstanding amounts in the bankruptcy proceedings but there is at least a theoretical possibility that he could recover his credit in the bankruptcy proceedings instead of remaining passive and pretending that disciplinary sanctions should be imposed on the new club, irrespective of his diligence or negligence in attempting to recover his credit.*

*34. As a result, should a creditor fail to pursue his claim in the bankruptcy proceedings, such creditor will be, in principle, precluded from requesting disciplinary sanctions to be imposed on the new club that took over from the bankrupt club. In such a situation, the creditor, by his inaction, somehow contributed to create the breach by the bankrupt club of art. 64 of the FDC.*

*35. The Member of the Committee concedes that bankruptcy proceedings before national courts are complex, lengthy and differ from one country to another and that their outcomes are hardly predictable. However, in light of the aforementioned CAS award, it is of paramount importance that a creditor seeking to recover his credit participates in the bankruptcy proceedings at national level.*

*36. Should, however, a new club appear and the creditor claim that this new club should be considered as the successor of the bankrupt one, the Member of the Committee considers that the Disciplinary Committee may only decide on questions relating to the succession of the former club and the liability of the new club towards the debts of the former one provided that the creditor has first participated in the bankruptcy proceedings.*

*37. Turning back to the case at hand, the Member of the Committee observes that the new Club claimed that the Creditor had been duly informed of the bankruptcy proceedings and had the opportunity to file a claim within those proceedings. However, the new Club submitted that for an unknown reason the Creditor decided not to participate in the bankruptcy proceedings and, therefore was negligent as he failed to properly register his claim in the aforementioned bankruptcy proceedings.*

*38. Bearing the above in mind, and taking into consideration that the Creditor did not register his claim during the bankruptcy proceedings as he is not listed on the list of creditors dated 16 June 2017, it appears that the Creditor decided not to participate in the bankruptcy proceedings – or at least remained passive –, thereby waiving his right to collect his credit in the bankruptcy proceedings.*

*39. As a result, the Member of the Committee concludes that the Creditor failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance by the original Debtor, and subsequently by the new Club, of the decision passed on 21 May 2015 by the Dispute Resolution Chamber.*

*40. Therefore, although the new Club, PFC CSKA-Sofia, is to be considered the sporting successor of the original Debtor, PFC CSKA Sofia, the Member of the Committee resolves that no disciplinary sanctions shall be imposed on the new Club and all charges against the latter shall be dismissed as a result of the lack of diligence of the Creditor in collecting his credit in the insolvency proceedings".*

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

32. On 14 April 2020, the Appellant lodged a Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision. With its Statement of Appeal, the Appellant nominated Mr. Manfred P. Nan, Attorney-at-law in Arnhem, the Netherlands, as arbitrator.

33. On 23 April 2020, FIFA informed the CAS Court Office that the Respondents agreed to nominate Mr. Patrick Lafranchi, Attorney-at-law in Bern, Switzerland, as arbitrator.

34. On 15 May 2020, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code.

35. On 29 May 2020, the CAS Court Office informed the Parties that the Panel appointed to decide this matter had been constituted as follows:

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| President: | Mr Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece |
| Arbitrators: | Mr. Manfred P. Nan, Attorney-at-law in Arnhem, the Netherlands |
| | Mr. Patrick Lafranchi, Attorney-at-law in Bern, Switzerland. |

36. On 7 July 2020, the Second Respondent filed its Answer, in accordance with Article R55 of the Code.

37. On 13 July 2020, the First Respondent filed its Answer, in accordance with Article R55 of the Code.

38. On 21 July 2020, the Appellant and the Second Respondent informed the CAS Court Office that they prefer a hearing to be held in this matter and the First Respondent that it did not consider a hearing necessary.

39. On 9 October 2020, a hearing took place at the CAS Court Office in Lausanne, Switzerland. The President of the Panel and the parties were present in person and Mr. Manfred P. Nan and Mr. Patrick Lafranchi participated by videoconference.

40. The Panel sat in the following composition:

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|---|---|
| President: | Mr Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece |
| Arbitrators: | Mr. Manfred P. Nan, Attorney-at-law in Arnhem, the Netherlands |
| | Mr. Patrick Lafranchi, Attorney-at-law in Bern, Switzerland. |

41. The Panel was assisted by Mr Fabien Cagneux, CAS Counsel.

42. The hearing took place in the presence of:

a) For the Appellant: Mr. Antonio Rigozzi, Mr. Riccardo Coppa (Counsel), and Mr. Youness Bengelloun (in person)

b) For the First Respondent: Mr Miguel Liétard Fernández-Palacios (FIFA Director of Litigation) and Mr Jaime Cambreleng (FIFA Head of Litigation)

c) For the Second Respondent: Mr. Marc Cavaliero, Ms. Carol Etter (Counsel), Mr. Georgi Cholakov (Director of Legal at PFC CSKA-Sofia) and Mrs. Mileva-Ivanova (witness).

43. At the outset of the hearing, the Parties confirmed that they had no objections against the constitution of the Panel.

44. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected, following which the Panel closed the hearing.

45. On 16 October 2020, the CAS Court Office invited the Appellant to submit his comments on the award rendered in the case CAS 2019/A/6461 relied upon by the First and the Second Respondent at the hearing.

46. On 21 October 2020, the Appellant submitted his comments with respect to the abovementioned award.

47. On 23 October 2020, the Panel allowed the Second Respondent to submit its comments with respect to the award CAS 2019/A/6461 inviting it, upon request of the Appellant, to limit its submission on the content of the award and not to comment on the Appellant's arguments that were not rebutted during the hearing.

48. On 30 October 2020, the Second Respondent submitted its comments with respect to the abovementioned award.

## IV. SUBMISSIONS OF THE PARTIES

49. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all the written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

50. The Appellant's submissions, in essence, may be summarised as follows:

- The Appealed Decision correctly determined that PFC CSKA-Sofia is the sporting successor of CSKA based on the following: the names PFC CSKA-Sofia and PFC CSKA Sofia are almost identical; the two entities are registered at the same address and play their home matches at the same stadium, i.e. "Bulgarian Army Stadium", the historical stadium of CSKA, located at Boulevard Dragan Tsankov 3, BG-1504, Sofia; the official logo, the colours, the uniforms, the club's official website are exactly the same; in fact, according to the official website and the public statements of the club, the two entities share the same football history and the same sporting achievements.

- As a result, and in line with relevant CAS jurisprudence, the Appealed Decision ruled correctly that PFC CSKA-Sofia, being the sporting successor of CSKA, shall also be considered a non-compliant party and is, therefore, subject to the obligations under Article 64 FDC.

- However, the FIFA DC erroneously ruled that the above principles cannot apply to PFC CSKA-Sofia because of the Appellant's alleged *"lack of diligence"* in recovering his credit in the Bulgarian bankruptcy proceedings for the following reasons: (i) there is no link between the two procedures, except for the principle prohibiting double recovery; other

than that, the Appellant's conduct in the bankruptcy proceedings is irrelevant for the FIFA disciplinary proceedings against PFC CSKA-Sofia; (ii) there have been flaws in the national bankruptcy proceedings (in the form of violations of provisions of the European Insolvency Regulation) significantly affecting the Appellant's right to lodge his claim in the national bankruptcy proceedings and, as such, precluding any limitation of the sporting succession doctrine based on alleged negligence in such proceedings; (iii) there is no *"lack of diligence"* by the Appellant, who was initially registered to the list of creditors in the bankruptcy proceedings but afterwards removed without any reason and obviously without him knowing about that, and he was not duly informed as the correspondence received was belated, incomplete and unclear. In fact, it was only after the BFU letter of 13 September 2017 that the Appellant became aware that he was not registered on the Final List of Creditors dated 16 June 2017.

- His alleged negligence was not the reason why the Appellant did not get paid through the bankruptcy proceedings. Under Bulgarian law, the amount due for breach of the employment contract, even if it is definitively recognised by FIFA (or, on appeal, by CAS), is not admissible in the national bankruptcy proceedings. That is why the claims of several players against CSKA were not satisfied in full, as they did not receive any amounts corresponding to compensation for breach of contract. Consequently, for (at least) the (substantial) part of the claim awarded as compensation for breach of contract, the Appellant did not even have the *"theoretical possibility"* to recover his claim that was (validly and definitively) granted by the FIFA DRC.

- With respect to the CAS 2019/A/6461 case, the Appellant submitted that the findings of the CAS Panel in that case strongly corroborate his position that the Appealed Decision correctly held that the Second Respondent is the sporting successor of CSKA as the same key elements justifying the sporting succession are present in this matter as well. Moreover, the Appellant claims that said award cannot be relied upon to refuse to consider his arguments submitted in the present case as the Panel in that case was not presented with the same arguments as the ones submitted by the Appellant in the present case, namely that recovery through bankruptcy proceedings and seeking application of Article 64 FDC are two separate avenues that should be treated independently. In addition, in CAS 2019/A/6461, the Panel decided that the *"diligence exception"* of the award CAS 2011/A/2646 is no blanket rule, that the assessment of diligence should be made based on the specific circumstances of each case and that the mere fact that the creditor has not validly registered his claim in the bankruptcy proceedings does not mean that he did not show the required degree of diligence.

51. In consideration of the above, the Appellant submitted the following requests for relief:

*"(i) Upholding the present Appeal;*

*(ii) Setting aside the Decision under Appeal;*

*(iii) Replacing the Decision under Appeal with an award ordering that: - PFC CSKA-Sofia is found guilty of failing to comply in full with the decision passed by the FIFA DRC on 21 May 2015 in the proceedings*

*between Mr. Youness Bengelloun and PFC CSKA Sofia - PFC CSKA-Sofia has breached Article 15 of the FIFA Disciplinary Code (2019 ed.) or Article 64 of the FIFA Disciplinary Code (2017 ed.);*

*(iv) imposing to PFC CSKA-Sofia the sanction(-s) it deems appropriate under Article 15 of the FIFA Disciplinary Code (2019 ed.) or Article 64 of the FIFA Disciplinary Code (2017 ed.);*

*(v) in alternative to the prayers for relief (iii) and (iv) above, referring the present case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the CAS Award;*

*(vi) in any event, ordering that FIFA and/or PFC CSKA-Sofia shall bear all arbitration costs incurred with the present proceedings and cover all costs incurred by Mr. Youness Bengelloun in relation with the present proceedings, including legal fees".*

52. The First Respondent's submissions, in essence, may be summarised as follows:

- It is evident that by being aware of the existence of the Original Club's insolvency proceedings in Bulgaria as from 2 September 2015 and not seeking to register his claim in accordance with the applicable domestic law, the Appellant contributed to the successor CSKA's breach of Article 64 FDC, as he did not enable the payment of his debt through the insolvency proceedings despite having been able to do so at all times. Moreover, by having been informed about the existence of the insolvency proceedings in Bulgaria, the purpose of the provision of the EU Insolvency Regulations relied upon by the Appellant was already fulfilled and hence any reliance on such regulation is moot. The Appellant further openly admits that he was exclusively relying on the information that FIFA may have received in the context of other proceedings. In arguing this, the Player has desperately attempted to shift his negligent conduct towards other stakeholders instead of demonstrating that he diligently contacted (or at least sought to contact) the insolvency administrator. No proof of any participation in the insolvency proceedings has been produced, and yet the Appellant expected the Committee and now the Panel to turn a blind eye towards his inaction and towards a CAS award that dealt with –and resolved– an almost identical situation: CAS 2011/A/2646.

- In the Appealed Decision, in line with the criteria previously followed by the CAS in cases of sporting succession, and in light of the evidence on file, the FIFA DC rightfully concluded that *"there is no other alternative but to conclude that the new Club, PFC CSKA-Sofia, is to be regarded as the sporting successor of the original Debtor, PFC CSKA Sofia".*

- As to the Appellant's diligence, it has to be recalled that the Appellant had learned of the existence of the insolvency proceedings as a result of FIFA's letter of 2 September 2015 (*i.e.* before the Sofia court's decision to initiate insolvency proceedings on 2 October 2015) and, despite this, he never took any action to register his claim and defend his rights in accordance with Bulgarian insolvency law. In line with the award CAS 2011/A/2646, the Appellant was expected to contribute *"to remove the prerequisite leading to the sanction imposed on the Decision: the lack of payment of the debt ordered in the FIFA DRC decision"*. By not taking any measures to ensure that his credit was being duly communicated to the Bulgarian authorities, he did not fulfil his expected conduct. With respect to the nature of the debt

– *i.e.* outstanding salaries and compensation for breach of contract –, the Appellant has failed to prove that claims for breach of employment agreement are not *"recoverable"* in Bulgarian bankruptcy proceedings.

53. Based on the foregoing, the First Respondent submitted the following requests for relief:

*"(a) Rejecting the appeal on the merits;*

*(b) Confirming the Appealed Decision;*

*(c) Ordering the Appellant to bear the full costs of these arbitration proceedings".*

54. In turn, the Second Respondent's submissions, in essence, may by summarised as follows:

- PFC CSKA-Sofia is not the successor of CSKA, but of another team, Litex Lovech, whose legal and financial obligations were duly paid by PFC CSKA-Sofia. In particular, on 27 May 2016, all the shares in "PFC Litex Lovech AD" were transferred from "Litex Commerce AD" (the respective parent company) to "PFC CSKA 1948-AD". This change in ownership was reflected in the Commercial Register on 2 June 2016. Following this transaction, the new owners changed the name of the company from "PFC Litex Lovech AD" to "PFC CSKA-Sofia EAD" and acquired the license and players from Litex Lovech. As a result, not only the legal entity, but also the football team of CSKA is different than PFC CSKA-Sofia. All this was confirmed by the BFU.

- PFC CSKA-Sofia acquired the assets in the bankruptcy estate of CSKA by paying the highest bid (approximately 4 million Euros), thanks to which all football players, coaches, and staff members of CSKA were or will be fully compensated for their registered and accepted claims listed in the bankruptcy.

- The conclusion of the Appealed Decision that PFC CSKA-Sofia is the sporting successor of CSKA is flawed, as PFC CSKA-Sofia is the sporting successor of Litex Lovech and there are no links between PFC CSKA-Sofia and CSKA. Should PFC CSKA-Sofia be considered as a successor of CSKA as well, this would mean that it would have to pay (in addition to the 4 million Euros already paid into the bankruptcy assets) the debts of CSKA not listed in the bankruptcy list.

- The concept of sporting succession was introduced by the CAS to prevent abuses. In all CAS cases submitted, the old (debtor) club remained affiliated with the same federative rights (license and/or TMS accounts); the "new club" operated with the same management, players and staff; the "new club" took over the position of the "old club" in the championship without any gap in-between; no proper bankruptcy proceedings were conducted, either because it did not concern the bankruptcy of the "old club" or of an "old entity" or because it did not matter to the case. However, none of this is the case here. In addition, had FIFA intended to include cases involving bankruptcy proceedings into the concept of sporting succession, it should have stated so expressly in the provision of Article 15 (4) of the FDC, which codified the sporting successor case-law. Furthermore,

PFC CSKA-Sofia did not act fraudulently: it paid more than double what was necessary to cover all debts towards privileged creditors of CSKA, it acquired its assets through a public tender and it was transparent with FIFA since the very beginning. By applying the principles set out in CAS 2011/A/2646, PFC CSKA-Sofia cannot be considered as the *"sporting successor"* of CSKA

- In cases of a bankrupt and disaffiliated club, FIFA traditionally states that it is no longer in any position to intervene in the enforcement of claims against the bankrupt entity. Otherwise, the equal treatment of all creditors, which is established under Bulgarian law, would be jeopardized. The national bankruptcy proceedings are still ongoing and the competent Court of Sofia as well as the appointed trustees remain exclusively competent. BGN 8,000,000 are momentarily being distributed and all registered and accepted claims of staff, coaches and players of CSKA in the total amount of BGN 3,053,630.47 will be compensated in full. As of July 2020, 95% of the creditors have applied for payment and have been paid. Consequently, the original debtor, CSKA in liquidation, is still able to fulfil its financial obligations towards its employees. Thus, the only thing CSKA cannot do is to comply with any possible decision passed by the FIFA DC on the basis of Article 15 of the FDC (2019 ed.) / Article 64 FDC (2017 ed.), as it is up to the Sofia City Court to decide as to when the creditors will be satisfied.

- As to the Appellant's legal actions in the context of the bankruptcy proceedings, it seems that he has been included in the initial list of creditors *ex officio* without him filing any claim. The Appellant therefore never pro-actively introduced the relevant FIFA decision, translated into Bulgarian, for review of the bankruptcy trustee. The bankruptcy trustee declared that she had reviewed all the documentation of CSKA, and in accordance with Bulgarian law, determined the existence of valid claims. Only where the trustee established a party to have the quality of a creditor, that party was inserted in the final list of the creditors. More importantly, the Appellant never actively filed any claim within the applicable deadlines. This has been confirmed by the bankruptcy trustee. He never showed the diligence that any creditor should demonstrate in the context of bankruptcy proceedings, although he had in his possession all the relevant information through FIFA correspondence and through his legal representative who was aware of all the relevant information on 13 October 2015, *i.e.* before the first summons of creditors took place.

- Other than what the Appellant implies, credits arising out of claims for breach of an employment agreement are recoverable in Bulgarian bankruptcy proceedings. There are crucial differences between the cases of other Players quoted by the Appellant. Mr. Sprockel for instance did not provide enough evidence for his case and that is why his claim was not admitted in full, whereas in the cases of Bernardo Tengarrinha and Nilson Barros the creditors did not exhaust all legal remedies and did not file a separate claim requesting their compensation in full to be heard by an appeal court.

- With respect to the CAS 2019/A/6461 case and the Appellant's comments thereon, none of the elements justifying the sporting succession are present in this matter and, in particular, *"the right to compete of Second Respondent is not connected to the bankruptcy of CSKA at all"*. It further claims that the award in CAS 2019/A/6461 supports its argument that

proper bankruptcy proceedings should prevent the application of the FDC and that it confirms the need for creditors to be diligent in recovering their claim, in order for them to be able to validly request the imposition of disciplinary sanctions upon the debtor's successor. The only reason the Panel in CAS 2019/A/6461 allowed the sanctioning of the new club there, was that the FIFA DRC decision had been rendered after the bankruptcy of the old club and, as a result, the creditor was in fact unable to undertake any actions to recover his claim in the course of the bankruptcy proceedings.

55. In consideration of the above, the Second Respondent submitted the following requests for relief:

*"Prayer 1: The Appeal shall be rejected and the decision of the FIFA Disciplinary Committee shall be confirmed in its entirety.*

*Prayer 2: Mr. Youness Bengelloun shall be ordered to bear the costs of the arbitration and he shall be ordered to contribute to the legal fees incurred by Second Respondent at an amount of at least CHF 20,000".*

## V. JURISDICTION

56. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed the Appellant did not have its domicile in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Art. 186 para. 1 of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. This general principle of *"Kompetenz-Kompetenz"* is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748).

57. Article R47(1) of the Code provides as follows:

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

58. The jurisdiction of CAS, which is not disputed, derives from Article 58 (1) of the FIFA Statutes (2019 edition) that provides the following:

*"Appeals 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".*

59. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties. It therefore follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

60. The Appeal was filed within the 21 days set out in Article 58(1) of the FIFA Statutes. The Appealed Decision with grounds was communicated to the Appellant by FIFA on 20 March 2020 and the Appellant filed its Statement of Appeal with CAS on 14 April 2020. The Statement of Appeal was filed timely in accordance with Article R32 (1) of the CAS Code, as 10 and 13 April 2020 were official holidays (and 11 and 12 April 2020 non-business days) in the Canton of Geneva, where the Appellant's counsel is domiciled.

61. The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

62. It follows that the Appeal is admissible.

## VII. APPLICABLE LAW

63. Article R58 of the 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".*

64. The Panel notes that Article 57 (2) of the 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".*

65. The Panel therefore finds that the relevant FIFA rules and regulations as in force at the relevant time of the dispute, including the FDC, shall be applied primarily, and Swiss law shall be applied subsidiarily.

66. Considering the fact that the Appellant requested FIFA to execute the DRC Decision against PFC CSKA-Sofia, as CSKA's sporting successor, on 19 March 2018, the applicable version of the FDC in the matter at hand is the 2017 edition, which came into force on 1 January 2018 according to Article 147 FDC.

67. There is disagreement between the Parties with respect to the applicability of Bulgarian insolvency law in this case. The Appellant argues that Bulgarian insolvency law should apply to determine the issue of the validity of the CSKA insolvency proceedings only. The First Respondent relies on CAS 2012/A/2750, where the Panel ruled that *"insolvency proceedings are not governed by the various regulations of FIFA, but are solely governed by the law of the country where the insolvency is established, i.e. [Bulgaria]. The application of [Bulgarian or European] law is nevertheless strictly limited to the insolvency proceedings of [Original CSKA] insofar as [Bulgarian or European] law contravenes the application of the various regulations of FIFA"* and requests that neither Bulgarian nor EU law

be formally deemed as the applicable law. The Second Respondent considers the provisions of the European Insolvency Regulation to be applicable.

68. The Panel finds that there are no reasons to depart from the position expressed in CAS 2012/A/2750, relied on by the First Respondent, which eventually deemed that national law would apply in the dispute, *"strictly limited"* to matters related to the insolvency proceedings at hand (par. 88 of the award). As a result, Bulgarian law (and EU law, to the extent that it is directly applicable in Bulgaria), strictly limited to the insolvency proceedings of CSKA insofar as it contravenes the application of the various regulations of FIFA, shall apply in the matter at hand.

69. The Panel shall refer to the applicable Bulgarian and EU provisions later in this Award, if necessary.

## VIII. MERITS

70. According to Article R57 of the Code, the Panel has *"full power to review the facts and the law"*. As is long-established in the jurisprudence of the CAS, by reference to this provision, a CAS arbitration procedure may entail a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the task of the Panel to make an independent determination as to merits (see CAS 2007/A/1394, par. 21).

71. In light of the facts of the case and the arguments of the Parties, the Panel must first examine whether PFC CSKA-Sofia is to be considered the sporting successor of CSKA and, if so, whether the imposition of disciplinary sanctions on PFC CSKA-Sofia for the failure of CSKA to respect a FIFA financial decision is warranted by the circumstances of the present case.

### A. The sporting succession of CSKA

72. The Panel shall first determine whether the Second Respondent is to be considered as the sporting successor of CSKA, the entity which was the Appellant's employer and the party ordered by the FIFA DRC Decision of 21 May 2015 to pay certain amounts to the Appellant.

73. As a preliminary remark, the Panel notes that none of the Parties disputes that sporting succession should apply to successors of a debtor club even before the entry into force of the 2019 version of the FDC and its Article 15 (4). The disagreement of the Parties is largely focused on the Second Respondent's argument that this case *"differs to past cases related to sporting successors"*.

74. Sporting succession of clubs has been addressed in several cases before the FIFA bodies and a few CAS awards before the entry into force of the 2019 version of the FDC. From the published CAS awards and those submitted by the Parties on file, the Panel finds that the issue of sporting succession is to be decided on a case-by-case basis by taking into account the

circumstances of each individual case and that the underlying principle of review is to ensure that financial decisions of a FIFA body or CAS on appeal be respected.

75. In what appears to be the first relevant CAS case, the Panel held that an entity that has purchased the assets of a bankrupt club was considered to be its "successor" since, by purchasing its assets, *"it continued the activity formerly developed by the referred club with the same image, badge, hymn, representative colours, emblems and placement, and is on the basis of the federative rights acquired in the auction that it has been participating, and currently participates, in the Chilean competitions replacing the former club. In other words and in practice, the "new club" took the position and activities performed by the former one, with the consent and approval of the Chilean Football Federation* (CAS 2011/A/2646, par. 10).

76. Even though in that first case it appears no (or no significant) distinction is attempted by the CAS Panel between the concepts of legal and sporting succession, other CAS Panels in subsequent cases have taken one step further to define the scope and criteria of sporting succession and its legal consequences. Succession of football clubs was deemed to be present even in the absence of formal legal links between the two entities (such as the purchase of the former's assets or federative rights) and, as such, succession of clubs was distinguished by legal succession and made subject to the test of sporting criteria only. The CAS Panel in CAS 2016/A/4550 & 4576 held that *"the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities"* (par. 134). This reflects to a large extent the fact that *"a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves"* (original text in Spanish at CAS 2013/A/3425 par. 139, also cited in CAS 2016/A/4550 & 4576 par. 135 and in CAS 2018/A/5618 par. 65-67, of the abstracts published on the CAS website).

77. The Panel notes at this point that both the CAS 2016/A/4550 & 4576 and the CAS 2018/A/5618 cases involve contractual disputes that concern the application of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") on the sporting successor of an "old club", rather than Article 64 FDC. However, the Panel does not deem this element as significant. The concept of sporting succession of clubs should equally apply to cases concerning the application of Article 64 FDC, considering that Article 64 FDC seeks precisely to ensure compliance with FIFA decisions on employment-related disputes decided on the basis of the FIFA RSTP. In this respect, the Panel points out that the sporting criteria established in CAS jurisprudence, along with the decision-making practice of FIFA bodies that set out the criteria of sporting succession, were codified in the new Article 15(4) FDC (2019 version) that replaced Article 64 FDC of the applicable 2017 version which provides that: *"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players,*

*shareholders or stakeholders or ownership and the category of competition concerned"*. As a result, the Panel finds that the criteria of sporting succession as established in the CAS jurisprudence before the entry into force of the 2019 version of the FDC shall apply in the CSKA case.

78. Reverting to the present matter, the Panel, having examined the position of the Parties, does not see any valid grounds to depart from the findings of the Appealed Decision to the extent that it confirmed that the Second Respondent is the sporting successor of CSKA, the original debtor. The Panel, in line with the findings of the aforementioned CAS awards, notes that the Second Respondent has an almost identical name and the same emblem, colours and stadium with CSKA. Moreover, the Second Respondent's website mentions the history, trophies and sporting achievements of CSKA, thereby creating, knowingly and with no doubt, an image of continuity to the eyes of the general public, namely that CSKA and the Second Respondent are one and the same club. As a matter of fact, the existence of the external elements of continuity and identity between CSKA and the Second Respondent is not disputed by any of the Parties. In light of the above considerations, the Panel cannot but confirm the Appealed Decision with respect to the sporting succession question.

79. Additionally, the Panel is comfortable in reaching that conclusion by the fact that the Appellant submitted three FIFA DC decisions in other cases involving the Second Respondent regarding the matter of CSKA's sporting succession, the common conclusion of such decisions being that *"on the basis of the information and documentation at hand, there is no other alternative but to conclude that the new Club, PFC CSKA-Sofia, appears to be the sporting successor of the original Debtor, PFC CSKA Sofia (…) As such, following the jurisprudence of the FIFA Disciplinary Committee, the Chairman concludes that, in principle, the sporting successor, i.e. the new Club, of a non-compliant party, i.e. the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2011 FDC"* (Decision 150860 PST of 25 September 2019, Decision 150034 PST of 20 November 2019 and Decision 170528 PST of 20 November 2019).

80. The Panel therefore proceeds to further examine why the arguments advanced by the Second Respondent in its Answer cannot be sustained.

81. The Second Respondent argues that the CSKA sporting succession is different than all the previous CAS cases where the issue of succession was discussed. The Second Respondent claims in essence that this is not a case where the "new club" simply took over the "old club"; the Second Respondent is not a successor of CSKA but of Litex Lovech; CSKA went through "proper bankruptcy proceedings"; the Second Respondent purchased the assets of CSKA and, in doing so, *"directly compensated the creditors of CSKA, such as the Player"*; FIFA did not want to include cases involving bankruptcy proceedings to the concept of succession and that is why it did not mention them in the relevant provisions or circular; CSKA, being in liquidation, is still able to fulfil its financial obligations towards its employees; and national bankruptcy proceedings preclude FIFA from imposing sanctions on potential successors.

82. The Panel dismisses the "different case" line of argumentation of the Second Respondent according to which it did not simply take over the "old club" and, if anything, it is the successor of Litex Lovech but not of CSKA. First and foremost, the Panel notes that hardly two sporting

succession cases are alike. Each one is bound to be different due to the specific nature of that type of cases and the multiplicity of forms of corporate organisation of football clubs. As such, they can hardly be all specifically regulated. The Second Respondent took over the administration of the former CSKA club, regardless of the manner in which this materialised in the present case, and effectively replaced it in the eyes of the football-related and the general public by actively adopting all the elements that constituted the external appearance of CSKA, thus giving an impression of club continuity. This conclusion, which starkly emerges to the Panel, cannot be affected by the fact that, technically, the legal entity now operating the club is the renamed and relocated entity that previously operated another club. It makes no difference in the eyes of the external observer whether the entity operating a club is a new entity that was set up for this purpose, an already existing entity, an entity that is the result of the consolidation of two entities into one or an entity that has taken ownership of another. The end result is the same. The Panel needs to be clear that by coming to such conclusion it does not attribute any fraudulent intention to the administration and the owners of the Second Respondent. The fact remains, however, that the Second Respondent did nothing to dissociate itself from CSKA. Quite the opposite. This has not been denied by the Second Respondent in its Answer where it is acknowledged that *"[t]here are intended and undisputable similarities between the two football teams"* (par. 14).

83. The Panel then turns to the Second Respondent's second threshold line of arguments, namely, that the "proper" bankruptcy proceedings underwent by CSKA in the matter at hand dictate a different treatment of CSKA and essentially exclude the case of its sporting succession. First of all, the Panel notes that if one was to accept the argument that the existence of bankruptcy proceedings *per se* is enough to exclude any case of sporting succession of the bankrupt entity for the purposes of application of Article 64 FDC, this would allow clubs to evade their financial obligations by choosing to declare bankruptcy and then be reactivated in one form or another, thereby effectively invalidating the whole concept of sporting succession. Reverting to the present matter, the Panel points out that the CSKA bankruptcy proceedings and the participation to such proceedings of the Second Respondent's current owners should not suffice to exclude application of the sporting succession criteria. They chose to purchase the assets (intellectual property rights) of the bankrupt CSKA, as they equally chose to make use of them and appear as its successor club. The argument of the Second Respondent that FIFA did not intend to include cases involving bankruptcy proceedings into the concept of sporting succession as it did not mention such cases in the relevant FDC provisions or circulars, cannot be sustained. Rather the opposite is true: first, the applicable FDC version does not regulate cases of sporting succession at all; second, Article 107 of the applicable FDC version does indeed allow FIFA to close cases against parties that declare bankruptcy. This is understandable, considering that clubs in bankruptcy are not legally allowed to make payments to creditors and that imposing sporting or financial sanctions against them has no practical sense. But this is not the case here. Article 107 FDC does not apply to the Second Respondent which is not the bankrupt party and is not legally prevented from making payments to CSKA creditors. In addition, the word "may" in the relevant provision implies that FIFA has discretion to close the proceedings, but no obligation to do so (CAS 2012/A/2750, par. 133). In fact, the unsustainable nature of the Second Respondent's case (arguing that "proper" bankruptcy proceedings justify an exception to sporting succession and having to pay CSKA debts – in addition to Litex Lovech debts, for which the Panel notes that no proof is submitted

on file – would violate the principle of equality of treatment against *"all other clubs in Bulgaria and Europe"*) does not stand up to scrutiny. Clubs have to pay their financial obligations on time and in full. Ensuring the payment of clubs' financial obligations is what led to the creation of the concept of sporting succession in the first place.

84. As a result, the Panel confirms the findings of the Appealed Decision that the Second Respondent is the sporting successor of CSKA, the entity which was the Appellant's employer and the party ordered by the FIFA DRC Decision of 21 May 2015 to pay certain amounts to the Appellant.

## B. Application of Article 64 FDC

### *a) In general*

85. The Panel shall now consider whether sanctions are to be imposed on the Second Respondent for failing to comply with the FIFA DRC decision that partially accepted the Appellant's claim against CSKA.

86. According to the arguments advanced by the Second Respondent in its Answer, it is FIFA's long-standing practice that national bankruptcy proceedings supersede its own enforcement system because of the expertise of the national courts. Moreover, Article 64 FDC cannot be used if a creditor's claim was not fully paid after the conclusion of the national bankruptcy proceedings, as any other action would contravene the principle of equality of creditors and the very purpose of bankruptcy proceedings. In the case at hand, the bankruptcy proceedings are yet to be completed, contrary to the factual basis in the case CAS 2011/A/2646. Also, the Second Respondent did not take over federative rights, players or the position of CSKA in competitions as was the case in CAS 2011/A/2646. Furthermore, as particularly emphasised during the hearing by the Second Respondent, there is a need to avoid creating a situation of inequality of treatment by allowing creditors that did not participate in national bankruptcy proceedings, to benefit from the FIFA regulations in place and enforce their claims through application of the FDC against the new club as this is an option unavailable to national creditors and to creditors being outside the scope of the application of FIFA rules.

87. As a general consideration, the Panel notes that CAS has already entertained the possibility for the FIFA DC to impose sanctions in accordance with Article 64 FDC on a new club that took over from a bankrupt club (*CAS 2011/A/2646*, par. 19). This means that, in principle, bankruptcy proceedings do not exclude the application of Article 64 FDC on a non-compliant party that is the successor of the bankrupt club. In addition, the Panel notes that the First Respondent does not seem to share the Second Respondent's views as to the non-application of Article 64 FDC in its Answer. Tellingly, the current practice of the FIFA DC is demonstrated by the decisions submitted on file by the Appellant according to which *"(…) in principle, the sporting successor, i.e. the new Club, of a non-compliant party, i.e. the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 (…)"* (Decision 150860 PST of 25 September 2019, Decision 150034 PST of 20 November 2019 and Decision 170528 PST of 20 November 2019). As a result, the Panel cannot share the Second

Respondent's view on the non-applicability of FIFA disciplinary rules based on an alleged general exception in cases involving bankruptcy proceedings.

***b) Due diligence of the Player and other considerations***

88. The Panel shall therefore deal with the last issue pertinent to the dispute and examine whether the Appellant's conduct during the CSKA bankruptcy procedure is relevant and, if so, whether he was negligent in asserting his claim against CSKA in the context of the bankruptcy procedure.

89. Both the First and the Second Respondent point out that the Appellant had failed to participate in the CSKA bankruptcy proceedings, even though he was aware of such proceedings. The essence of the argument is that, because of this unquestionably negligent approach, which the Appellant tried to blame on FIFA, BFU or the CSKA bankruptcy trustee, no action was taken that could have eliminated the circumstances leading to a breach of Article 64 FDC by the Second Respondent.

90. The Appellant claims in turn that his conduct in the CSKA bankruptcy proceedings is irrelevant for the FIFA disciplinary proceedings against PFC CSKA-Sofia, as these are two separate avenues of recovery that are conceptually different and should be treated independently. As such, negligence plays no part in the application of Article 64 FDC. In addition, he pointed out that there were several irregularities during the CSKA bankruptcy proceedings, mainly that the trustee did not comply with the duty to inform known (foreign) creditors under Articles 40 and 42 of the European Insolvency Regulation and, as the Appellant testified during the hearing, he did everything possible and within his powers to recover his claim but after being informed that he was included in the list of creditors in 2015 he no longer actively pursued the case as he got married at the time and started a family. In any case, he claims that there is no lack of diligence on his part as he was initially registered in the creditors' list and then removed without a warning and that he was not "duly informed" about the bankruptcy proceedings as the indications received by FIFA, BFU and PFC CSKA-Sofia were belated, incomplete and unclear.

91. The Panel is aware that the matter of "diligence" has previously been dealt with by CAS in the case CAS 2011/A/2646, where the Panel held that:

*"27. This being said, in accordance with the evidence taken in these proceedings (i.e. the letter of the bankruptcy's receiver – "síndico" – dated 6 March 2012, not challenged by FIFA), the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so.*

*28. This, in the Panel's opinion, is to be considered as a lack of diligence of the Player in recovering his credit that shall have an impact in the present case.*

*(…)*

*31. At the present stage the Panel cannot ascertain if the Player would have received the sum of his credit in case he had duly claimed for it in the bankruptcy proceedings, but it was at least a feasible theoretical possibility that could have happened (especially taking into account the privileged nature of his credit) and which would have provoked that the order of payment issued by the FIFA DRC was complied and thus, that the sanction imposed in the Decision became groundless. The Panel is of the view that the Player should have explored such possibility, should have communicated his credit in the bankruptcy proceedings as he previously announced, should have tried to get the money and not simply remain passive, additionally pretending that disciplinary sanctions are imposed irrespective of his diligence or negligence in trying to achieve a result (recovery of the debt) that would remove the ground of the sanction".*

92. In addition, in CAS 2019/A/6461, relied on by the Respondents during the hearing and commented upon by the Appellant, it has been stated that:

*"59. Finally, the Panel finds no merit in the allegation that the Creditor club did not show the required degree of diligence, just because it did not register his claim in the liquidation proceedings of the Debtor club. There is no doubt that a creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claims. (…) To the understanding of the Panel, in such instances it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owed. Yet, there is no blanket rule, and this assessment should be made based on the specific circumstances of each particular case.*

*60. Yet, in view of the circumstances of this case, there is nothing to suggest that the Creditor club remained passive, or, uninterested in pursuing its claims. It is important to note that the liquidation procedure against the Debtor club commenced on 14 March 2014, while the decision of the FIFA DRC was notified to the parties on 1 December 2015. In this timeline, the Panel finds that the Creditor club could not have done much differently during this period. It is evident that whilst the DRC proceedings were pending, the Creditor club had no opportunity to timely register its claim in the liquidation proceedings.*

*(…)*

*62. Consequently, based on the facts and the information before it, the Panel finds that the conduct of the Creditor has not contributed to the Debtor's failure to comply with the FIFA DRC decision. For these reasons, the Panel rejects all arguments raised by the Appellant in this respect.*

*63. In light of the foregoing analysis and after taking into consideration all evidence and arguments presented by the parties, the Panel concludes that all conditions provided in Article 64 (1) of the FDC are met and confirms that the Appellant should be held liable for the breach of Art. 64 of FDC. The appeal must, therefore, be dismissed".*

93. In this respect, the Panel finds that it is indeed important to have a consistent approach towards parties involved in insolvency proceedings and that similar situations have to be treated equally.

94. However, in view of the circumstances of the present case, the Panel finds that the conclusions to be drawn from the above-mentioned awards that are pertinent to the application of Article 64 FDC in the present matter are that: (a) there must be at least a *"feasible theoretical possibility"* for the creditor to receive the sum of his credit in case he had duly claimed for it in the

bankruptcy proceedings (CAS 2011/A/2646, par. 31), and (b) it needs to be established that the recovery of the credit would have been feasible via the bankruptcy proceedings; in other words, there must be certainty that, in case the creditor had acted otherwise, the successor of the original debtor would not have to face the consequences of non-compliance with the FIFA DRC decision (CAS 2019/A/6461 par. 60, 62).

95. Having said that, and in view of the Appellant's position that Bulgarian law prevents the admission of amounts due for breach of the employment contract in the national bankruptcy proceedings, the Panel notes that the Second Respondent failed to prove otherwise.

96. The Appellant's statement was corroborated by evidence that the claims of the players Civard Sprockel, David Bernardo Tengarrinha and Nilson Antonio Veiga Barros, admitted to the "First partial appropriation account for distribution of funds" to CSKA creditors of 16 June 2017 and approved by the Sofia City Court on 7 November 2019, did not include any amounts corresponding to compensation for breach of contract.

97. Whereas the Second Respondent justified the non-admission of such amounts by citing the relevant extracts of the decision nr. 2837 of the Sofia City Court of 10 May 2016 and argued that the players *"did not provide enough evidence"* and *"did not exhaust all the legal remedies available"* as they failed to file a separate claim to be heard by an appeal court, the Panel points out that the relevant extracts of the decision nr. 2837 of the Sofia City Court of 10 May 2016 stipulate the following:

[regarding the claim of Nilson Antonio Veiga Barros]

*"(…) It also establishes that the club incurs an obligation for the player's salary for the month of October, November and December 2012 amounting to EUR 24,999 or BGN 48,893.79. Considering there is no evidence that the obligation was settled (the lack of records in the books does not prove that the debt was settled through payment), the court admits that the obligation is valid and is to be included in the lost according to art. 687 of [Labour Code]. This is not the case when talking about the penalty claim amounting to EUR 261,002 – there is no such contractual obligation, it is based on a contract different than the employment one. Such a contract is not presented to provide valid grounds that such an obligation was agreed upon. As a consequence that part of the claim is not addressed"*

[regarding the claim of David Bernardo Tengarrinha]

*"(…) It also establishes that the club incurs an obligation for the player's salary for the month of November and December 2012 amounting to EUR 15,600 or BGN 30,510.95. Considering there is no evidence that the obligation was settled (the lack of records in the books does not prove that the debt was settled through payment), the court admits that the obligation is valid and is to be included in the lost according to art. 687 of [Labour Code]. This is not the case when talking about the penalty claim amounting to EUR 236,859 – this is deemed to not be a valid contractual obligation according to LC, because indemnity is only due in case of a non-respect of a termination advance notice up to three monthly salaries or EUR 26,600. It is obvious that the claim is based on a contract different than the employment one. Such a contract is not presented to provide valid grounds that such an obligation was agreed upon. As a consequence that part of the claim should be disregarded"*

(undisputed free translation provided by the Appellant, emphasis added).

98. As a result, and considering that the Second Respondent did not provide any proof to the contrary, the Panel agrees with the Appellant that Bulgarian legislation or legal authorities, prevent the admission of amounts due for breach of the employment contract in the national bankruptcy proceedings. In this context, the Panel notes particularly that Mrs. Dora Mileva-Ivanova, the permanent trustee in the CSKA bankruptcy proceedings, was unable to confirm during her testimony at the hearing whether there was any players' claim admitted in full (including compensation for breach of the employment contract) to the bankruptcy proceedings at all.

99. In light of the above, the Panel finds that the relevant Bulgarian provisions cited in the decision nr. 2837 of the Sofia City Court of 10 May 2016 would not in fact allow the Appellant to retrieve his claim in full but only in part (EUR 51,566 corresponding to outstanding salaries) in the course of the national bankruptcy proceedings. As a result, it would have been impossible for him to ensure full enforcement of the FIFA DRC decision via the Bulgarian bankruptcy proceedings and, therefore, it would have been impossible for him to prevent the Second Respondent's failure to comply with the FIFA DRC decision.

100. Since the Panel determined that, in view of the particular circumstances of this case, the Appellant's conduct during the CSKA bankruptcy procedure is not relevant (because in the Bulgarian bankruptcy proceedings the Player would not have had a *"feasible theoretical possibility"* to receive any amount related to the compensation awarded by the final and binding FIFA DRC Decision), the Panel does not need to ascertain whether his conduct was negligent or not in asserting his claim against CSKA in the context of the national bankruptcy proceedings.

101. Consequently, the Panel sets aside the decision passed by the Member of the FIFA Disciplinary Committee on 12 February 2020 and rules that PFC CSKA-Sofia is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 21 May 2015.

102. The Panel shall now proceed to determine the sanction to be imposed on the Second Respondent in accordance with Article 64 FDC.

103. Article 64(1) FDC stipulates that *"Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (nonfinancial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision): a) will be fined for failing to comply with a decision; b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision; c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced; d) (only for associations) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced"*.

104. In view of the Appellant's prayers for relief and the particular circumstances of the case and taking into account the applicable range of the monetary fine to be imposed under Article 15(2) FDC as well as the First Respondent's practice as demonstrated in the case of Mr. Civard Sprockel where a fine of CHF 15,000 was imposed to the Second Respondent for a violation of Article 64 FDC (FIFA DC Decision 150860 PST of 25 September 2019), the Panel deems it appropriate to impose a fine of CHF 15,000 on the Second Respondent in this case for violation of Article 64 FDC and grant the Second Respondent a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Appellant.

105. Further than that, in view of the circumstances of the case, and the First Respondent's well-established practice in cases when a long period of time has elapsed during which the decision rendered by the FIFA DRC has not been complied with, to the detriment of the Appellant, but also the aim of the provisions included in Article 64 FDC, namely, to ensure that financial decisions of a FIFA body or CAS on appeal be respected, the Panel considers a ban from registering new players (at national and international level) for two (2) entire and consecutive registration periods as an appropriate sanction, to be automatically imposed on the Second Respondent following the expiry of the granted deadline and to be lifted upon the payment of the total outstanding amount to the Appellant.

106. All other prayers for relief are rejected.

## ON THESE GROUNDS

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

1. The appeal filed by Youness Bengelloun on 14 April 2020 against the decision issued on 12 February 2020 by the FIFA Disciplinary Committee is upheld.

2. The decision issued on 12 February 2020 by the FIFA Disciplinary Committee is set aside and replaced by the following decision:

*"1. PFC CSKA-Sofia, being the sporting successor of PFC CSKA Sofia, is found guilty of failing to comply in full with the decision passed by the FIFA Dispute Resolution Chamber on 21 May 2015 according to which PFC CSKA Sofia was ordered to pay to Youness Bengelloun the following amounts:*

*a) outstanding monies in the amount of EUR 51,566 plus 5% interest p.a. until the date of effective payment, as follows:*

*- 5% p.a. as of 2 August 2012 over the amount of EUR 10,000;*

*- 5% p.a. as of 26 October 2012 over the amount of EUR 12,600;*

*- 5% p.a. as of 26 November 2012 over the amount of EUR 12,600;*

*- 5% p.a. as of 26 December 2012 over the amount of EUR 12,600;*

*- 5% p.a. as of 26 December 2012 over the amount of EUR 266;*

*- 5% p.a. as of 26 December 2012 over the amount of EUR 3,500;*

*b) compensation for breach of contract in the amount of EUR 355,730 plus 5% interest p.a. as from 26 December 2012 until the date of effective payment.*

*2. PFC CSKA-Sofia is ordered to pay a fine to FIFA to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.*

*3. PFC CSKA-Sofia is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt as the sporting successor of PFC CSKA Sofia to Youness Bengelloun.*

*4. If payment is not made to Youness Bengelloun and proof of such payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Bulgarian Football Union by this deadline, a ban from registering new players, either nationally or internationally, for two (2) entire and consecutive registration periods will be imposed on PFC CSKA-Sofia as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Bulgarian Football Union and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*

*The transfer ban shall cover all men eleven-a-side teams of PFC CSKA-Sofia – first team and youth categories –. PFC CSKA-Sofia shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to Youness Bengelloun of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, PFC CSKA-Sofia may not make use of the exception and the provisional measures stipulated in Article 6 of the FIFA Regulations on the Status and Transfer of Players in order to register players at an earlier stage.*

*5. If PFC CSKA-Sofia still fails to pay the amount due to Youness Bengelloun even after the complete serving of the transfer ban in accordance with point 4 above, Youness Bengelloun may demand in writing to the secretariat to the FIFA Disciplinary Committee, for the imposition of further disciplinary measures".*

3. (…).

4. (…).

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