



Arbitrations CAS 2020/A/7346 Neimenggu Zhongyou Football Club v. FIFA (Raul Agne Montull) & CAS 2020/A/7347 Neimenggu Zhongyou Football Club v. FIFA (Pere Ballary Sargatal) & CAS 2020/A/7348 Neimenggu Zhongyou Football Club v. FIFA (Arnau Sala Descals), award of 22 October 2021

Panel: Mr Edward Canty (United Kingdom), Sole Arbitrator

*Football*

*Disciplinary dispute regarding a club's failure to comply with article 15 FIFA Disciplinary Code*

*Burden and standard of proof*

*Legal basis to impose sanctions for failure to comply with article 15 FIFA Disciplinary Code*

*Appropriateness of the approach to setting the level of fines*

*Proportionality of the sanctions*

*Financial difficulties and Covid-19 pandemic to justify a failure to comply with article 15 FIFA Disciplinary Code*

*Transfer ban as a cause of a club's bankruptcy*

1. Each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the CAS panel that the facts it pleads are established. The standard of proof which applies to proceedings of the FIFA judicial bodies is that of the “personal conviction” of the members of FIFA’s judicial bodies which is equalled to the standard of “comfortable satisfaction”. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt”.
2. The requirements provided in Article 15 of the FIFA Disciplinary Code (FIFA DC) for the imposition of disciplinary sanctions against a club have been met if a club breached the disciplinary regulations by failing to make payments to the creditors, even though instructed to do so by the FIFA Players’ Status Committee (PSC). The discretion afforded to the FIFA DC in determining the appropriate sanctions is foreshadowed by the FIFA DC. There is a legal basis for the FIFA DC to impose disciplinary sanctions where the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the club breaching such rules is not inconsistent with those principles.
3. Regarding the level of fines imposed, the reference to the “outstanding amounts due” to the creditors is sufficient to corroborate the sanctions imposed since it constitutes the most logical nexus between the severity of the violation committed and the sanctions to be imposed.

4. Under the principle of autonomy of associations, a disciplinary decision should be amended only in those cases where the FIFA judicial body making the decision has exceeded the margin of discretion afforded to it such that it must be held to have acted arbitrarily. It is not sufficient for a CAS panel to merely disagree with a particular sanction, it must be considered evidently and grossly disproportionate to the offence. Moreover, in accordance with Article 15 of the FIFA DC, it is possible for multiple sanctions to be imposed and the principle of “*ne bis in idem*” does not prevent a transfer ban being imposed as well as a fine for the same violation, providing there is a valid legal basis for so doing under the FIFA DC.
5. In principle, financial difficulties to satisfy a payment obligation cannot excuse the failure to make the payment required. In particular, according to the FIFA Covid-19 Football Regulatory Issues, absent any supporting evidence, the existence of the pandemic cannot be relied upon, in itself, as a valid reason not to satisfy a party’s financial obligations to another flowing from a decision of FIFA’s judicial bodies.
6. Absent any supporting evidence, the suggestion that the imposition of a transfer ban may lead to the club’s bankruptcy is not convincing notably given that it is entirely within the control of the club to avoid a transfer ban being imposed by making payment of the outstanding amounts.

## I. PARTIES

1. Neimenggu Zhongyou Football Club (the “Appellant” or the “Club”) is a football club with its registered office in Hohhot, Inner Mongolia, People’s Republic of China. The Club is registered with the Chinese Football Association (the “CFA”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeals arbitration

proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

#### **A. Proceedings before the FIFA Dispute Resolution Chamber**

4. Following a contractual dispute having arisen, Raul Agne Montull, Pere Ballary Sargatal and Arnau Sala Descals (the "Creditor(s)") each lodged a claim against the Club (the "Original Parties") before the FIFA Players' Status Committee (the "FIFA PSC").
5. On 11 February 2020, the Single Judge of the FIFA PSC issued a decision in respect of the contractual dispute between the coach, Raul Agne Montull and the Club (the "Montull PSC Decision"), with the following operative part:

- “1. The claim of the Claimant, Raul Agne Montull, is partially accepted.*
- 2. The Respondent, Club Neimenggu Zhongyou, has to pay to the Claimant within 30 days as from the date of notification of this decision, the amount of EUR 178,379.35 net as outstanding remuneration, plus 5% interest over the amount of EUR 175,000 as follows:*
  - a. 5% p.a. as of 1 August 2018 on the amount of EUR 75,000 until the date of effective payment;*
  - b. 5% p.a. as of 1 September 2018 on the amount of EUR 20,000 until the date of effective payment;*
  - c. 5% p.a. as of 1 October 2018 on the amount of EUR 20,000 until the date of effective payment;*
  - d. 5% p.a. as of 1 November 2018 on the amount of EUR 20,000 until the date of effective payment;*
  - e. 5% p.a. as of 1 December 2018 on the amount of EUR 20,000 until the date of effective payment;*
  - f. 5% p.a. as of 1 January 2019 on the amount of EUR 20,000 until the date of effective payment.*

3. *The Respondent has to pay to the claimant within 30 days as from the date of notification of this decision, EUR 110,000 net.*
  4. *The Respondent is ordered to provide the Claimant with the relevant certificates attesting the payment of taxes to the competent authorities in the amounts under points 2. and 3. above.*
  5. *In the event that the amounts due to the Claimant in accordance with the abovementioned numbers 2. and 3. above are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  6. *Any further claim lodged by the Claimant is rejected.*
  7. *The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the parties, within 30 days as from the date of notification of the present decision, as follows:*
    - 7.1 *The amount of CHF 20,000 has to be paid to FIFA by the Respondent to the following bank account with reference to case nr. 18-01685/iml-mle:*

[...]
    - 7.2 *The amount of CHF 5,000 has to be paid by the Claimant directly to FIFA. Considering that the Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the Claimant is exempted from paying the aforementioned amount as costs of the proceeding.*
  8. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which remittance under points 2. and 3. above are to be made and to notify the Players' Status Committee of every payment received".*
6. In addition, on 11 February 2020, the Single Judge of the FIFA PSC also issued a decision in respect of the contractual dispute between the coach, Pere Ballary Sargatal and the Club (the "Sargatal PSC Decision"), with the following operative part:
- "1. *The claim of the Claimant, Pere Ballart Sargatal, is partially accepted.*
  2. *The Respondent, Club Neimenggu Zhongyou, has to pay to the Claimant within 30 days as from the date of notification of this decision, the amount of EUR 39,500 net as outstanding remuneration, plus 5% interest over the amount of EUR 39,500 as follows:*
    - a. *5% p.a. as of 1 August 2018 on the amount of EUR 17,000 until the date of effective payment;*

- b. *5% p.a. as of 1 September 2018 on the amount of EUR 4,500 until the date of effective payment;*
  - c. *5% p.a. as of 1 October 2018 on the amount of EUR 4,500 until the date of effective payment;*
  - d. *5% p.a. as of 1 November 2018 on the amount of EUR 4,500 until the date of effective payment;*
  - e. *5% p.a. as of 1 December 2018 on the amount of EUR 4,500 until the date of effective payment;*
  - f. *5% p.a. as of 1 January 2019 on the amount of EUR 4,500 until the date of effective payment.*
3. *The Respondent has to pay to the claimant within 30 days as from the date of notification of this decision, EUR 24,750 net.*
  4. *The Respondent is ordered to provide the Claimant with the relevant certificates attesting the payment of taxes to the competent authorities in the amounts under points 2. and 3. above.*
  5. *In the event that the amounts due to the Claimant in accordance with the abovementioned numbers 2. and 3. above are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  6. *Any further claim lodged by the Claimant is rejected.*
  7. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the parties, within 30 days as from the date of notification of the present decision, as follows:*
    - 7.1 *The amount of CHF 12,000 has to be paid to FIFA by the Respondent to the following bank account with reference to case nr. 18-01686/iml-mle:*

[...]
    - 7.2 *The amount of CHF 3,000 has to be paid by the Claimant directly to FIFA. Considering that the Claimant has already paid the amount of CHF 3,000 as advance of costs at the start of the present proceedings, the Claimant is exempted from paying the aforementioned amount as costs of the proceeding.*
  8. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which remittance under points 2. and 3. above are to be made and to notify the Players' Status Committee of every payment received".*

7. Furthermore, on 11 February 2020, the Single Judge of the FIFA PSC issued a decision in respect of the contractual dispute between the coach, Arnau Sala Descals and the Club (the “Descals PSC Decision”), with the following operative part:

- “1. The claim of the Claimant, Arnau Sala Descals, is partially accepted.*
- 2. The Respondent, Club Neimenggu Zhongyou, has to pay to the Claimant within 30 days as from the date of notification of this decision, the amount of EUR 82,379.35 net as outstanding remuneration, plus 5% interest over the amount of EUR 79,000 as follows:*
  - a. 5% p.a. as of 1 August 2018 on the amount of EUR 34,000 until the date of effective payment;*
  - b. 5% p.a. as of 1 September 2018 on the amount of EUR 9,000 until the date of effective payment;*
  - c. 5% p.a. as of 1 October 2018 on the amount of EUR 9,000 until the date of effective payment;*
  - d. 5% p.a. as of 1 November 2018 on the amount of EUR 9,000 until the date of effective payment;*
  - e. 5% p.a. as of 1 December 2018 on the amount of EUR 9,000 until the date of effective payment;*
  - f. 5% p.a. as of 1 January 2019 on the amount of EUR 9,000 until the date of effective payment.*
- 3. The Respondent has to pay to the claimant within 30 days as from the date of notification of this decision, EUR 49,500 net.*
- 4. The Respondent is ordered to provide the Claimant with the relevant certificates attesting the payment of taxes to the competent authorities in the amounts under points 2. and 3. above.*
- 5. In the event that the amounts due to the Claimant in accordance with the abovementioned numbers 2. and 3. above are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
- 6. Any further claim lodged by the Claimant is rejected.*
- 7. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the parties, within 30 days as from the date of notification of the present decision, as follows:*

7.1 *The amount of CHF 20,000 has to be paid to FIFA by the Respondent to the following bank account with reference to case nr. 18-01684/iml-mle:*

[...]

7.2 *The amount of CHF 5,000 has to be paid by the Claimant directly to FIFA. Considering that the Claimant has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the Claimant is exempted from paying the aforementioned amount as costs of the proceeding.*

8. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which remittance under points 2. and 3. above are to be made and to notify the Players' Status Committee of every payment received”.*

8. The Montull PSC Decision, Sargatal PSC Decision and the Descals PSC Decision (the “PSC Decisions”) were sent to the Original Parties on 28 February 2020.

9. On 8 March 2020, the Club requested the grounds of the PSC Decisions.

10. On 28 April 2020, the FIFA Players' Status Department wrote to the Original Parties and made reference to Article 15(4) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (November 2019 edition), which stated, “*Whenever procedural costs are due, the grounds of a decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs. **If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn.** As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal*” (emphasis in original). The letter went on to confirm that, on the basis that the PSC Decisions were communicated to the Original Parties on 28 February 2020 and the Club had failed to pay the relevant procedural costs within the stated deadline, the PSC Decisions were therefore final and binding upon the Original Parties.

## **B. Proceedings before the FIFA Disciplinary Committee**

11. On 1 May 2020, the FIFA Disciplinary Committee (the “FIFA DC”) wrote to the CFA (with copy sent to the Original Parties) to confirm that it had opened disciplinary proceedings against the Club because it had allegedly failed to comply with the PSC Decisions, thereby violating Article 15 FIFA Disciplinary Code (2019 edition) / Article 64 FIFA Disciplinary Code (2017 edition). The Club was invited to provide the secretariat of the FIFA DC with its position, including proof of any payments it had made since the PSC Decisions were issued.

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12. On 7 May 2020, the Club responded to secretariat to the FIFA DC acknowledging its financial obligations under the PSC Decisions but asking for a period of thirty (30) days to make payment, due to the change in ownership of the Club and the impact of the Covid-19 pandemic.
13. On 16 June 2020, the FIFA DC issued its decision in respect of the Montull PSC Decision (the “Montull Appealed Decision”) with the following operative part:

*“1. The club Neimenggu Zhongyou is found guilty of failing to comply in full with the decision passed by the Single Judge of the Players’ Status Committee on 11 February 2020 according to which it was ordered to pay to the coach Raul Agne Montull*

- *EUR 178,379.35 net as outstanding remuneration within 30 days as from the date of notification of the decision, plus 5% interest over the amount of EUR 175,000 to be calculated in accordance with the aforementioned decision.*
- *EUR 110,000 net within 30 days as from the date of notification of the decision.*

*In addition, the Debtor was ordered to provide the Creditor with the relevant certificates attesting the payment of taxes to the competent authorities with regard to the mentioned amounts.*

2. *The Debtor is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision.*
3. *The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Chinese Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Chinese Football Association 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 the Debtor – first team and youth categories -. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.*
5. *As a member of FIFA, the Chinese Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Chinese Football Association does not comply with this decision, the FIFA Disciplinary*



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*Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*

6. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment made and to provide the relevant proof of payment.*
  7. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment received”.*
14. In addition, on 16 June 2020, the FIFA DC issued its decision in respect of the Sargatal PSC Decision (the “Sargatal Appealed Decision”) with the following operative part:

*“1. The club Neimenggu Zhongyou (hereinafter, the Debtor) is found guilty of failing to comply with the decision passed by the Single Judge of the Players’ Status Committee on 11 February 2020 according to which it was ordered to pay to the coach Pere Ballart Sargatal (hereinafter, the Creditor), the following amounts:*

- *EUR 39,500 net as outstanding remuneration plus 5% interest to be calculated in accordance with the aforementioned decision.*
- *EUR 24,750 net*

*In addition, the Debtor was ordered to provide the Creditor with the relevant certificates attesting the payment of taxes to the competent authorities with regard to the aforementioned amounts.*

2. *The Debtor is ordered to pay a fine to the amount of CHF 7,500. The fine is to be paid within 30 days of notification of the present decision.*
3. *The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Chinese Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Chinese Football Association 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 the Debtor – first team and youth categories -. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.*

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5. *As a member of FIFA, the Chinese Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Chinese Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*
  6. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment made and to provide the relevant proof of payment.*
  7. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment received”.*
15. Furthermore, on 16 June 2020, the FIFA DC issued its decision in respect of the Descals PSC Decision (the “Descals Appealed Decision”) with the following operative part:
- “1. The club Neimenggu Zhongyou is found guilty of failing to comply with the decision of the Single Judge of the Players’ Status Committee rendered on 11 February 2020, according to which it was ordered to pay to the coach Arnau Sala Descals the following amounts:*
- *EUR 82,379.35 net as outstanding remuneration, plus 5% interest over the amount of EUR 79,000 to be calculated in accordance with the aforementioned decision;*
  - *EUR 49,500 net.*
- In addition, the Debtor was ordered to provide the Creditor with the relevant certificates attesting the payment of taxes to the competent authorities with regard to the aforementioned amounts.*
2. *The Debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.*
  3. *The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
  4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Chinese Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Chinese Football Association 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 the Debtor – first team and youth categories -. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular,*

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*the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.*

5. *As a member of FIFA, the Chinese Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Chinese Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*
  6. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment made and to provide the relevant proof of payment.*
  7. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Chinese Football Association of every payment received”.*
16. The Montull Appealed Decision, Sargatal Appealed Decision and the Descals Appealed Decision (the “Appealed Decisions”) were sent to the Original Parties on 18 June 2020.
  17. On 25 June 2020, the Club requested the grounds of the Appealed Decisions.
  18. On 20 July 2020, the grounds of the Appealed Decisions were communicated to the Original Parties. The Montull Appealed Decision provided, *inter alia*, as follows:
    - “[...] *the Single Judge wished to recall the content and scope of art. 15 of the FDC in order to duly assess the case at hand.*
    - *According to this provision:*
      1. *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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*
        - a) *will be fined for failing to comply with a decision; in addition:*
        - b) *will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
        - c) *in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be*

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*ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

(...)

3. *If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*

[...]

- *Finally, the Single Judge emphasised that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.*

[...]

- *The above having been established, the Single Judge noted that the terms of the decision passed by the Single Judge of the Players' Status Committee on 11 February 2020 were duly communicated, amongst others, to the parties, on 28 February 2020. Moreover, the Single Judge noted that, as the relevant procedural costs for the grounds of said decision, which were requested by the Debtor, were not paid (paragraph I.4. ut supra), the decision of the Single Judge of the Players' Status Committee dated 11 February 2020 became final and binding.*
- *In view of what has been explained under paragraph III.B./8. above, the Single Judge is not allowed to analyse the case decided by the Single Judge of the Players' Status Committee as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision of the Single Judge of the Players' Status Committee dated 11 February 2020.*
- *In this respect, the Single Judge first acknowledged that the Debtor claimed that it recently underwent changes in its management and administration, thereby facing issues associated with said reorganization as well as the communication there involved, and which had resulted in the delay of the fulfilment of its obligations towards its staff and players.*
- *In addition, the Single Judge observed that, according to the Debtor, the COVID-19 pandemic which had negatively affected China's football and economic environment, constituted a major impediment in paying the outstanding amounts due to the Creditor.*
- *In light of the Debtor's arguments, the Single Judge deemed it necessary to emphasize that clubs have the duty to be aware of their actual financial strength, constitute provision in anticipation of possible issues, such as a decrease in the income or a relegation (i.e. a contingency that any club may face), and finally conclude contracts that can be fulfilled. In other words, the principle of pacta sunt servanda – more relevant*

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*in the context of contractual dispute per se – is of paramount importance for FIFA and a key issue to be protected among others by the Regulations on the Status and Transfer of Players.*

- *To that end, the Single Judge also wished to refer to the content of art. 2 of the Swiss Civil Code, according to which “[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith” (cf. par. 46 ff. CAS 2010/A/2144 Real Betis Balompié SAD v PSV Eindhoven). Thus, the sole fact that the Debtor may be facing organizational issues associated with the changes in its management and administration or that it is also encountering impediments to the usual operations of the club, thereby hindering timely payment, does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor.*
- *Finally, and with respect to the argument relating to the COVID-19 pandemic, the member of the Committee found it appropriate to turn to the content of the FIFA publication of 2 April 2020 titled “COVID-19 – Football Regulatory Issues”.*
- *In said publication, it is publicly indicated that “although FIFA is fully aware of the potential financial difficulties of some clubs flowing from the obligation to comply with financial decisions rendered by the DRC, the PST or the Disciplinary Committee, no exceptions will be granted in this regard. Consequently, decisions passed by the above-mentioned judicial bodies must be respected by MAs, clubs, players and coaches without exception. FIFA will continue to apply article 15 of the FIFA Disciplinary Code in the event of failure to respect these decisions”.*
- *As such, the Single Judge deemed that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor, in accordance with the decision passed by the Single Judge of the Players’ Status Committee on 11 February 2020, have not been paid.*
- *In these circumstances, the Single Judge observed that the Debtor did not provide any proof of payment and that neither did the Creditor confirm receipt of the outstanding amounts.*
- *In light of all the above, the Single Judge concluded that the Debtor failed to comply with the decision passed by the Single Judge of the Players’ Status Committee on 11 February 2020, and is consequently withholding money from the Creditor. As a result, the Debtor is considered guilty of not complying with a decision, under the terms of art. 15 of the 2019 FDC.*
- *In view of the foregoing, the Single Judge concluded that the Debtor, by its conduct as described above, violated art. 15 of the FDC and should be sanctioned accordingly.*
- *With regard to the applicable sanctions, the Single Judge observed in the first place that the Debtor is a legal person, and as such can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.*

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- *In these circumstances, the Single Judge underlined that the fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 100 and CHF 1,000,000.*
- *This being established, it is emphasized that the Debtor withheld the amounts unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the amounts due to the Creditor.*
- *In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regarded a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.*
- *In application of art. 15 par. 1 b) of the FDC, the Single Judge considered a final deadline of 30 days as appropriate for the Debtor to settle the amounts due to be paid to the Creditor.*
- *In accordance with art. 15 par. 1 c) of the FDC, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.*
- *For the sake of good order, the Chinese Football Association is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Chinese Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Chinese Football Association fail to automatically implement said sanction and provide the Secretariat with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it”.*

19. The Sargatal Appealed Decision was drafted in similar terms apart from the following:

- *“In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regarded a fine amounting to CHF 7,500 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due”.*

20. The Descals Appealed Decision was drafted in similar terms apart from the following:

- *“In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regarded a fine amounting to CHF 15,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due”.*

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

21. On 7 August 2020, the Club filed Statement of Appeals against the Appealed Decisions, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the “CAS Code”), naming FIFA as the respondent. In these submissions, the Club requested that the cases be referred to a Sole Arbitrator pursuant to Article R50 of the CAS Code.
22. On 19 August 2020, the Club filed its Appeal Briefs, pursuant to Article R51 of the CAS Code, and uploaded to the CAS E-filing platform on 24 August 2020.
23. On 27 August 2020, the CAS Court Office wrote to the Parties, enclosing copies of the Statement of Appeals and Appeal Briefs for FIFA, setting a deadline for its Answers. Furthermore, the CAS Court Office asked FIFA if it agreed to the appointment of a Sole Arbitrator and asked the Parties if they agreed to the three appeals being heard together by the same Panel in accordance with Article R50 of the CAS Code.
24. On 28 August 2020, the Club also applied for a stay of the Appealed Decisions.
25. On 28 August 2020, FIFA requested that the deadline for its Answers to be set once the Club had paid the advance of costs pursuant to Article R55 of the CAS Code.
26. On 28 August 2020, the CAS Court Office set aside the original time limit for FIFA Answers which would then be set upon the Club’s payment of the advance of costs and requested FIFA’s response to the Club’s application for a stay of the Appealed Decisions.
27. On 30 August 2020, the Club wrote to the CAS Court Office confirming its agreement to the three appeals being heard together by the same Panel and noted that FIFA had only suspended one of the Appealed Decisions.
28. On 31 August 2020, FIFA confirmed its agreement to the appointment of a Sole Arbitrator (from the football list).
29. On 7 September 2020, the CAS Court Office asked the Club if it wished to maintain its application for a stay of the Appealed Decisions given, as noted by FIFA, that it is well-established jurisprudence that a decision of a financial nature issued by a private Swiss association (FIFA in this case) is not enforceable while under appeal, confirmed by Article 61(1) of the FIFA Disciplinary Code (2019 edition) (the “FIFA Disciplinary Code”).
30. On 9 September 2020, the Club withdrew its request for a stay of the Appealed Decisions.
31. On 24 September 2020, the CAS Court Office informed the Parties that Mr Edward Canty, Solicitor in Manchester, United Kingdom, had been appointed as Sole Arbitrator.

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32. On 29 September 2020, the Club filed a challenge against the appointment of Mr Canty as Sole Arbitrator.
33. On 2 October 2020 and 6 October 2020, FIFA and Mr Canty filed their respective positions rejecting the validity of the challenge brought by the Club.
34. On 9 October 2020, the Club informed the CAS Court Office that it maintained its challenge.
35. On 19 October 2020, the CAS Court Office informed FIFA that the Club had paid the advance of costs in all three appeals and therefore set a new deadline for FIFA to file its Answers.
36. On 5 November 2020, FIFA requested an extension of ten days to the deadline to file its Answers which was granted by the CAS Court Office pursuant to Article R32 (2) of the CAS Code.
37. On 17 November 2020, FIFA filed its Answers, pursuant to Article R55 of the CAS Code, and uploaded to the CAS E-filing platform on the same day.
38. On 20 November 2020, upon being invited to express their position, FIFA informed the CAS Court Office that they did not consider a hearing necessary, requesting for an award to be rendered on the sole basis of the Parties' written submissions.
39. On 25 November 2020, the Club informed the CAS Court Office that they would prefer that a hearing is arranged.
40. On 12 January 2021, the CAS Court Office sent a copy of the Order on Petition for Challenge issued by the ICAS Challenge Commission, which stated, *inter alia*:

***“ON THESE GROUNDS***

*The Challenge Commission of the Board of the International Council of Arbitration for Sport hereby rules:*

1. *The petition for challenge to the nomination of Mr Edward Canty filed on 30 September 2020 by Neimenggu Zhongyou Football Club is dismissed.*
  2. *The costs of this Order shall be determined in the final award or in any other final disposition of this arbitration”.*
41. On 14 January 2021, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:



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- Mr Edward Canty, Solicitor in Manchester, United Kingdom, as Sole Arbitrator.
42. On 9 February 2021, the CAS Court Office requested the Parties confirmed their availability for a hearing pending final decision from the Sole Arbitrator as to whether a hearing would be held. Furthermore, the Club was asked to provide translations for two exhibits it had filed with its Appeal Brief.
  43. On 10 February 2021, the Club provided details of its availability and requested an extension to the deadline to provide translations due to the Spring Festival (Chinese New Year) holidays in China meaning translation companies were unavailable.
  44. On 15 February 2021, FIFA provided details of its availability should a hearing be required.
  45. On 16 February 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing.
  46. On 23 February 2021, the CAS Court Office sent a copy of the Order of Procedure to the Parties, as well as a copy of the translated exhibits provided by the Club.
  47. On 2 March 2021, the CAS Court Office circulated copies of the Parties' signed Order of Procedures.
  48. A hearing was arranged for 25 March 2021 however at the time the hearing was scheduled to commence, the Club's representative submitted by email a document entitled "*Defense opinion*" with a notification that the representative had resigned from his position at the Club due to a failed takeover of the Club, leaving it without any management structure.
  49. The CAS Court Office wrote to the Parties on 25 March 2021 acknowledging the correspondence from the Club's representative and drawing the attention of the Parties to Article R57(4) of the Code which states, "[if] *any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award*". It was noted that the Parties had been "*duly summoned on 16 February 2021 and the Appellant, on 10 and 15 March 2021, confirmed the attendance at the hearing. Consequently, the Sole Arbitrator, considering that the Appellant was given full opportunity to advocate its case, decides to proceed with the hearing, with the sole presence of FIFA. The latter shall have the opportunity to comment the "Defense opinions" and its admissibility*".
  50. Accordingly, on 25 March 2021, a hearing was held by video conference. At the outset of the hearing, FIFA confirmed it did not have any objection as to the constitution and composition of the arbitral tribunal.

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51. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares, Counsel to the CAS, the following persons attended the hearing:
- a) For the Club:
    - Unrepresented
  - b) For FIFA:
    - 1) Mr Roberto Nájera Reyes, Senior Legal Counsel
    - 2) Mr Alexander Jacobs, Senior Legal Counsel
52. No witnesses or experts were heard. A full opportunity was provided to the Parties to present their case, submit their arguments and FIFA was able to answer the questions posed by the Sole Arbitrator.
53. Before the hearing was concluded, FIFA expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
54. The Sole Arbitrator confirms that he carefully heard and fully reviewed and took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### IV. REQUESTS FOR RELIEF

55. In its Appeal Brief relating to the Montull Appealed Decision, the Club submitted the following requests for relief:

*“The Appellant respectfully requests the Court of Arbitration for Sport to:*

- (i) *Neimenggu Zhongyou requests the Decision of the Member of the FIFA Disciplinary Committee of 16 June 2020 to be deemed null and void, and the proceedings to be resumed ex novo; or, subsidiarity*
- (ii) *Neimenggu Zhongyou requests the Decision passed by the Member of the FIFA Disciplinary Committee on 16 June 2020 to be set aside; and*
- (iii) *Neimenggu Zhongyou requests to stay the execution of the appealed decision by suspending the payment of the fine amounting to CHF 20,000, the ban from registering new players, either nationally or internationally, as well as the transfer ban;*

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- (iv) *Neimenggu Zhongyou requests that the CAS determine that, considering the unique facts of the case hereunder and the financial dilemma faced with Neimenggu Zhongyou, the sporting sanction decided by the Member of the DisCo – a fine amounting to CHF 20,000 – is excessive and disproportionate; and*
- (v) *Neimenggu Zhongyou requests to refer the case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the Appealed Decision.*
- (vi) *Neimenggu Zhongyou requests to order FIFA to pay all arbitration costs and reimburse the Club the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS”.*

56. In its Appeal Brief relating to the Sargatal Appealed Decision, the Club submitted the following requests for relief:

*“The Appellant respectfully requests the Court of Arbitration for Sport to:*

- (vii) *Neimenggu Zhongyou requests the Decision of the Member of the FIFA Disciplinary Committee of 16 June 2020 to be deemed null and void, and the proceedings to be resumed ex novo; or, subsidiarity*
- (viii) *Neimenggu Zhongyou requests the Decision passed by the Member of the FIFA Disciplinary Committee on 16 June 2020 to be set aside; and*
- (ix) *Neimenggu Zhongyou requests to stay the execution of the appealed decision by suspending the payment of the fine amounting to CHF 7,500, the ban from registering new players, either nationally or internationally, as well as the transfer ban;*
- (x) *Neimenggu Zhongyou requests that the CAS determine that, considering the unique facts of the case hereunder and the financial dilemma faced with Neimenggu Zhongyou, the sporting sanction decided by the Member of the DisCo – a fine amounting to CHF 7,500 – is excessive and disproportionate; and*
- (xi) *Neimenggu Zhongyou requests to refer the case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the Appealed Decision.*
- (xii) *Neimenggu Zhongyou requests to order FIFA to pay all arbitration costs and reimburse the Club the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS”.*

57. In its Appeal Brief relating to the Descals Appealed Decision, the Club submitted the following requests for relief:

*“The Appellant respectfully requests the Court of Arbitration for Sport to:*

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- (xiii) *Neimenggu Zhongyou requests the Decision of the Member of the FIFA Disciplinary Committee of 16 June 2020 to be deemed null and void, and the proceedings to be resumed ex novo; or, subsidiarity*
- (xiv) *Neimenggu Zhongyou requests the Decision passed by the Member of the FIFA Disciplinary Committee on 16 June 2020 to be set aside; and*
- (xv) *Neimenggu Zhongyou requests to stay the execution of the appealed decision by suspending the payment of the fine amounting to CHF 15,000, the ban from registering new players, either nationally or internationally, as well as the transfer ban;*
- (xvi) *Neimenggu Zhongyou requests that the CAS determine that, considering the unique facts of the case hereunder and the financial dilemma faced with Neimenggu Zhongyou, the sporting sanction decided by the Member of the DisCo – a fine amounting to CHF 15,000 – is excessive and disproportionate; and*
- (xvii) *Neimenggu Zhongyou requests to refer the case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the Appealed Decision.*
- (xviii) *Neimenggu Zhongyou requests to order FIFA to pay all arbitration costs and reimburse the Club the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS”.*

58. In its Answer relating to the Montull Appealed Decision, FIFA submitted the following requests for relief:

*“In view of all the above, we would like to request CAS:*

- a. *To reject the Appellant’s appeal in its entirety;*
- b. *To confirm the decision 200634 rendered by the member of the FIFA Disciplinary Committee on 16 June 2020;*
- c. *To order the Appellant to bear all costs incurred with the present procedure; and*
- d. *To order the Appellant to make a contribution to FIFA’s costs”.*

59. In its Answer relating to the Sargatal Appealed Decision, FIFA submitted the following requests for relief:

*“In view of all the above, we would like to request CAS:*

- a. *To reject the Appellant’s appeal in its entirety;*

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- b. *To confirm the decision 200635 rendered by the member of the FIFA Disciplinary Committee on 16 June 2020;*
- c. *To order the Appellant to bear all costs incurred with the present procedure; and*
- d. *To order the Appellant to make a contribution to FIFA's costs”.*

60. In its Answer relating to the Descals Appealed Decision, FIFA submitted the following requests for relief:

*“In view of all the above, we would like to request CAS:*

- a. *To reject the Appellant's appeal in its entirety;*
- b. *To confirm the decision 200643 rendered by the member of the FIFA Disciplinary Committee on 16 June 2020;*
- c. *To order the Appellant to bear all costs incurred with the present procedure; and*
- d. *To order the Appellant to make a contribution to FIFA's costs”.*

## V. SUBMISSIONS OF THE PARTIES

61. The Club's submissions were, in effect, the same in relation to the three Appealed Decisions, apart from reflecting the different fine imposed in each, and may be summarised as follows:

- *The Appealed Decisions were disproportionate, the fines are excessive and should be set aside. The Club is under significant financial pressure and the fines will affect the Club's ability to pay the outstanding amounts owed to the Creditors.*
- *The fines were set with no proportionality or justification based on similar cases.*
- *The Club has paid a total amount of two months' salary to the Creditors in 2019 “through An Zhongqiang”, enclosing copy payment records to support this and also had continued to try and find an amicable solution with the individuals. The Club has always acknowledged and accepted the debts but has tried to agree payment by instalment but this has been refused, with the individuals insisting on payment in full of the outstanding amounts.*
- *The Club is still in a process of restructuring which has affected its normal day to day operations.*
- *The Covid-19 pandemic has had a devastating effect on its financial situation and the Chinese league is suspended meaning a huge loss of income, leaving the Club on the verge of bankruptcy. There are a number*

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*of other clubs in China who have dissolved or left the league due to similar financial problems. The fines imposed are too high given the debt the Club finds itself in due to the pandemic and simply creates further financial burdens which will impact on its ability to pay the outstanding salaries.*

- *The potential transfer ban could lead to the bankruptcy or dissolution of the Club because, if imposed, may lead to the potential new investors choosing not to make investments in the Club.*

62. FIFA's submissions, in essence, may be summarised as follows:

- *These are simple cases of non-payment of outstanding amounts, confirmed by the PSC Decision, and further supported by the Appealed Decisions before the FIFA DC for breach of Article 15 of the FIFA Disciplinary Code.*
- *The outstanding amounts remain unpaid and the Club has raised a number of unsupported and/or irrelevant arguments which should be dismissed. Furthermore, the fines imposed are proportionate and in line with the FIFA DC and the jurisprudence of the FIFA DC and the CAS.*
- *Article 36(2) of the FIFA Disciplinary Code specifies that "[a]ny party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact" and this is supported by Article 8 of the Swiss Civil Code and CAS jurisprudence. Therefore, the burden of proof is carried by FIFA to prove the disciplinary infringement and the Club carries the burden of proof to support the arguments it advances.*
- *It is for the Club to prove the sanctions imposed (fines and transfer ban) are disproportionate, which it failed to do, however in any event, FIFA can demonstrate that both the fines imposed and transfer ban were proportionate and in keeping with the jurisprudence of the FIFA DC.*
- *Article 6(4) of the FIFA Disciplinary Code provides that "fines shall not be less than CHF 100 or more than CHF 1,000,000" and the jurisprudence demonstrates that a fine should be proportionate and the intention should be for it to act as a deterrent but not create additional severe financial burden to the debtor.*
- *With regard to the Montull fine of CHF 20,000, this is proportionate and at the correct level given the approximate debt of CHF 305,682 which is consistent with a number of other FIFA DC decisions cited where a fine of CHF 20,000 had also been imposed:*
  - *191676 – CHF 279,720.50 outstanding*
  - *191214 – CHF 352,901 outstanding*
  - *190699 PST – CHF 278,334.60 outstanding*
  - *190544 PST – CHF 401,431 outstanding*

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- 190556 PST – CHF 254,665 outstanding
- 191075 – CHF 340,260 outstanding
- *With regard to the Sargatal fine of CHF 7,500, this is proportionate and at the correct level given the approximate debt of CHF 68,044 which is consistent with a number of other FIFA DC decisions cited where a fine of CHF 7,500 had also been imposed:*
  - FDD-6014 – CHF 54,449 outstanding
  - FDD-6133 – CHF 59,611 outstanding
  - FDD-5202 – CHF 51,593 outstanding
  - 200192 – CHF 69,917 outstanding
  - 200447 – CHF 54,345 outstanding
- *With regard to the Descals fine of CHF 15,000, this is proportionate and at the correct level given the approximate debt of CHF 139,791 which is consistent with a number of other FIFA DC decisions cited where a fine of CHF 15,000 had also been imposed:*
  - 170155 PST ZH – CHF 113,719 outstanding
  - 180024 PST ZH – CHF 160,769 outstanding
  - 170213 PST ZH – CHF 122,451 outstanding
  - 180171 PST ZH – CHF 174,078 outstanding
  - 180046 PST ZH – CHF 110,337 outstanding
  - FDD-5857 – CHF 179,012 outstanding
- *In regard to the transfer ban, this is proportionate and given the Club has also failed to comply with two other PSC Decisions, could be seen as lenient given Article 15(1)(c) FIFA Disciplinary Code provides that a points deduction or relegation may also be ordered in addition to a transfer ban in the event of repeated offences or persistent failure. FIFA Circular 1628 makes it clear to clubs that the FIFA DC will impose a point deduction and/or transfer ban as well as a fine for clubs which fail to pay what is owed to creditors in a timely fashion.*
- *Therefore, the imposition of a transfer ban until such time as the outstanding payments are paid is “an appropriate, necessary and proportionate sanction”. Furthermore, the Club has failed to adduce any*

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*evidence that the transfer ban may lead to its bankruptcy (in the same way it failed to adduce any evidence that payment of the outstanding amounts and the fines would have a similar effect) and therefore it failed to discharge its burden of proof.*

- *Indeed, it can be said that a transfer ban could have a positive financial effect on a club because it only bans a club from signing players (and spending money) but allows it to continue to sell players (thereby receiving income and saving cost), so should have a positive effect financially rather than negative.*
- *Furthermore, the transfer ban is only effective if the Club fails to pay the outstanding amounts within 30 days of the decision, as foreshadowed by Article 15(1)(b) FIFA Disciplinary Code, so it remains within the Club's control to avoid this if it makes the necessary payments in a timely fashion.*
- *Turning to the remainder of the arguments raised by the Club, firstly the suggestion it made some payments to the individuals in 2019 is irrelevant because the PSC Decision was issued on 11 February 2020 and the Club has failed to make any payments since then. In addition, it is irrelevant to the underlying issues whether or not the other party is prepared to accept payment in instalments and this cannot be used to justify or excuse non-payment.*
- *Secondly, the Club's argument that it has completed many payments in the past has no relevance and cannot justify altering the sanctions in the Appealed Decisions.*
- *The Club's arguments that it has faced issues relating to the changes in its ownership and management and due to the Chinese economy generally are also irrelevant; every club must take responsibility for its debts and financial difficulties cannot be used to justify the avoidance of paying debts.*
- *Finally, the suggestion that the impact of the pandemic has caused severe financial problems for the Club is also dismissed; these debts relate to 2018 and 2019 which was long before the pandemic and the PSC Decision is dated 11 February 2020, which was before the economic impact of the pandemic was experienced. FIFA also relies on its publication in April 2020, Covid-19 Football Regulatory Issues, which made it clear the pandemic could not be used to justify non-compliance with FIFA decisions, further supported by Circular 1720 which stated that clubs were not entitled to reduce or delay payments citing the pandemic, unless agreed with the other party.*
- *In conclusion, FIFA's position is that the Appealed Decisions are in line with FIFA Regulations, the jurisprudence of FIFA and CAS and are therefore lawful, proportionate and should be upheld.*

## VI. JURISDICTION

63. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2019 edition), providing that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS [...]” and Article R47 of the CAS Code which states “[a]n appeal against the decision of a federation, association



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*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”.*

64. Article 57(1)(e) of the FIFA Disciplinary Code determines as follows:

*“An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure pronounced is:*

*[...]*

*e) decisions passed in compliance with article 15 of this Code”.*

65. Article 49 of the FIFA Disciplinary Code states as follows:

*“Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes”.*

66. In view of Article 49 and Article 57(1)(e) of the FIFA Disciplinary Code and because the Appealed Decisions were based on the application of Article 15 of the FIFA Disciplinary Code, the Club was not required to file an appeal with the FIFA Appeals Committee before challenging the decision of the FIFA DC before CAS. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by all Parties.

67. It follows that CAS has jurisdiction to decide on the present dispute.

## **VII. ADMISSIBILITY**

68. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

69. According to Article 58(1) of the FIFA Statutes (2019 edition), appeals *“shall be lodged with CAS within 21 days of receipt of the decision in question”.*

70. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes (2019 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee. The appeal brief was also filed within the time limit stipulated by Article R51 of the CAS Code.

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71. It follows that the appeal is admissible.

### VIII. APPLICABLE LAW

72. The Club argued that “*the Panel shall apply the FIFA Disciplinary Code (current version) and, if necessary, Swiss law*”. In addition, it stated that “*as the seat of this arbitration is Lausanne, Switzerland, Swiss procedural law applies to these proceedings, in particular the Swiss Private International Law Act (PILA)*”.

73. FIFA argued that, according to Article 57(2) of the FIFA Statutes, the provisions of the CAS Code should apply to the proceedings and further, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. FIFA therefore submits that “*the FIFA Statutes and regulations – namely the FIFA Disciplinary Code (hereinafter referred to as the “FDC”) – constitute the applicable law to the matter at hand and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap in the regulations of FIFA*”.

74. Article R58 of the CAS Code provides the following:

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

75. Article 57(2) of the FIFA Statutes (2019 edition) stipulates 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”.*

76. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FIFA Disciplinary Code, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

### IX. MERITS

77. The main issues to be determined are:

- (i) What is the burden of proof and standard of proof applicable to the present matter?
- (ii) Is there a legal basis for the FIFA DC to impose disciplinary sanctions on the Club?

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- (iii) If there is a legal basis, are the disciplinary sanctions imposed on the Club by the FIFA DC disproportionate or should they be modified in any event due to the particular financial circumstances of the Club?

**A. What is the burden of proof and standard of proof applicable to the present matter?**

78. Before assessing the main issues of the present dispute, the Sole Arbitrator deems it necessary to first establish the burden of proof and the standard of proof applicable to the present matter.
79. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

*“According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code “Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right” (free translation from the French original version – “Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit”). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of “burden of proof” are (i) the “burden of persuasion” and (ii) the “burden of production of the proof”. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party” (see also CAS 2005/A/968 and CAS 2004/A/730).*

80. This concept was further explained in CAS 2011/A/2384 & 2386 as follows:

*“Under Swiss law, the ‘burden of proof’ is regulated by Art. 8 of the Swiss Civil Code (the “CC”), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven ... Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal”.*

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81. In CAS 2003/A/506, it was held:

*“[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”.*

82. This position is further supported by the provisions of Article 36 paras. 1 and 2 of the FIFA Disciplinary Code which states:

- “1. The burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies.*
- 2. Any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. During the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care”.*

83. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

84. The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA’s judicial bodies decide on the basis of their “personal conviction” and CAS jurisprudence has consistently equalled this standard to the standard of “comfortable satisfaction”. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (see CAS 2010/A/2172; CAS 2009/A/1920).

85. This is supported by and consistent with the Swiss Civil Code as set out in CAS 2014/A/3562:

*“The Panel observes that according to Swiss Civil procedure law the standard of proof to be applied is in line with such jurisdiction (see STAEHELIN / STAEHELIN / GROLIMUND, Zivilprozessrecht, § 18, N 38) and fully adheres to the above-mentioned reasoning in CAS 2011/A/2426 and will therefore also give such meaning to the applicable standard of “personal conviction”/ “comfortable satisfaction””.*

86. Based on the foregoing, the Sole Arbitrator is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

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**B. Is there a legal basis for the FIFA DC to impose a disciplinary sanction on the Club?**

87. The provisions of Article 6 of the FIFA Disciplinary Code sets out the basis for the imposition of disciplinary sanctions, which states, *inter alia*, as follows:

*“3. The following disciplinary measures may be imposed on legal persons only:*

*a) transfer ban;*

*b) playing a match without spectators;*

*c) playing a match with a limited number of spectators;*

*d) playing a match on neutral territory;*

*e) ban on playing in a particular stadium;*

*f) annulment of the result of a match;*

*g) deduction of points;*

*h) relegation to a lower division;*

*i) expulsion from a competition in progress or from future competitions;*

*j) forfeit;*

*k) replaying a match;*

*l) implementation of a prevention plan.*

*4. Fines shall not be less than CHF 100 or more than CHF 1,000,000.*

*[...]*

*6. The disciplinary measures provided for in this Code may be combined”.*

88. In addition, the provisions of Article 15 of the FIFA Disciplinary Code states, *inter alia*, as follows:

*“1. 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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:*

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*a) will be fined for failing to comply with a decision; in addition:*

*b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*

*c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

[...]

*3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. A transfer ban or a ban on taking part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved”.*

89. The Sole Arbitrator notes that the FIFA DC is unable to analyse the substance of a case before it decided by the relevant body; its sole task is to analyse whether the debtor complied with the terms of a final and binding decision.
90. In respect of these cases, the Club accepts it has outstanding payments owed to the Creditors.
91. The Club maintains it has made some payments to the Creditors in the sum of two months' salary in 2019, which it cites as a gesture of good faith and its desire, at the time, of seeking to resolve its debts.
92. Notwithstanding this, the Appealed Decisions were rendered on 16 June 2020 and notified to the Club on 20 July 2020 and the Club has made no suggestion, nor provided any evidence, that it has made any payments after that date towards the outstanding amounts awarded to each in the Appealed Decisions.
93. Therefore, the payments the Club alleges it made in 2019 are not relevant to the determination as to whether the Appealed Decisions should be upheld or not; the Club does not suggest that the amounts outstanding should be reduced due to any payments it has made and therefore it can be taken that the Club accepts the amounts set out in the Appealed Decisions are correct.
94. Accordingly, it can be taken as undisputed that the Club has failed to make payments to the Creditors, even though instructed to do so by the FIFA PSC, for which reason the Sole Arbitrator has no hesitation in finding that requirements provided in Article 15 of the FIFA Disciplinary Code for the imposition of disciplinary sanctions against the Club have been met.

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95. Indeed, it should have been clear to the Club that its failure to make the payments to the Creditors ordered by the FIFA PSC, that this would breach the disciplinary regulations and that appropriate sanctions would be imposed.
96. It is worth noting that the discretion afforded to the FIFA DC in determining the appropriate sanctions is foreshadowed by the FIFA Disciplinary Code and supported by the CAS jurisdiction:
- “Such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behavior of a player breaching such rules is not inconsistent with those principles”* (CAS 2014/A/3665, 3666 and 3667).
97. Finally, the Swiss Federal Supreme Court has also deemed the system of sanctions utilised by FIFA, in the event of non-compliance with its decisions or those of the CAS, as being lawful, which have been applied in the cases at hand (Swiss Federal Supreme Court decision dated 5 January 2007, 4P.240/2006).
98. Consequently, the Sole Arbitrator finds that there was a legal basis for the FIFA DC to impose disciplinary sanctions on the Club.
- C. If there is a legal basis, are the disciplinary sanctions imposed on the Club by the FIFA DC disproportionate or should they be modified in any event due to the particular financial circumstances of the Club?**
99. The Club argues that the fines of CHF 20,000 (for a debt of approximately CHF 305,682), CHF 7,500 (for a debt of approximately CHF 68,044) and CHF 15,000 (for a debt of approximately CHF 139,791) coupled with the transfer ban for continued non-compliance are excessive and disproportionate; in contrast, FIFA maintains that both the fines and potential transfer ban are justified and proportionate.
100. As noted above, pursuant to Article 6(4) FIFA Disciplinary Code, a fine imposed by the FIFA DC shall not be less than CHF 100 and not more than CHF 1,000,000. The fines of between CHF 20,000 and CHF 7,500 imposed on the Club therefore falls within the regulatory parameters set by the FIFA Disciplinary Code, just like the possible imposition of a transfer ban for failure to abide by the decisions of the FIFA DC.
101. Notwithstanding the above, it is entirely possible that fines within these parameters may be disproportionate subject to the particular circumstances of the case.
102. It is worth reiterating the intention that lies behind Article 15 of the FIFA Disciplinary Code:

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*“Article 64 FDC provides FIFA with a clear legal basis to sanction a club that failed to pay another club a sum of money following an instruction to do so by the PSC. The Panel finds that Article 64 para. 1 FDC clearly sets out the legal framework applicable in the event of a club’s failure to comply with payment obligations set by a body of FIFA. It therefore enables the Club to foresee the potential consequences of failing to comply with a decision passed by the PSC. It is clear that under Article 64 FDC, a club that is obliged to comply with a FIFA decision may be subject to a number of measures, such as fines, point deductions, transfer bans, etc., in the event it disregards a decision ordering it to pay an amount of money to another club: in other words, the FIFA statutes clearly indicate not only the existence of a violation, but also the kinds of sanctions (see for example, CAS 2018/A/5663)”* (CAS 2018/A/5900).

103. As a start point, the Sole Arbitrator notes that FIFA seeks to justify the level of fines imposed referable to the level of the debts owed to the Creditors and in that regard, CAS jurisprudence has consistently determined the following in this respect:

*“[T]he reference to the “outstanding amounts due” is sufficient to corroborate the sanctions imposed. Indeed, the Panel finds that the “outstanding amounts due” constitutes the most logical nexus between the severity of the violation committed and the sanctions to be imposed”* (CAS 2018/A/5551).

104. Having established the appropriateness of the approach to setting the level of fines, turning to an assessment of proportionality, the Sole Arbitrator recognises the principle of association autonomy and should seek to amend a disciplinary decision only in those cases where the FIFA judicial body making the decision has exceeded the margin of discretion afforded to it such that it must be held to have acted arbitrarily. It is not sufficient for a CAS Panel to merely disagree with a particular sanction, it must be considered evidently and grossly disproportionate to the offence.

105. Indeed, consistent CAS jurisprudence determines the following:

*“[T]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence”* (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).

106. Further, the CAS has held as follows:

*“Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel “would not easily ‘tinker’ with a well-reasoned sanction [...]”. Therefore, a panel “would naturally [...] pay respect to a fully reasoned and well-evidenced decision [...] in pursuit of a legitimate and explicit policy”. In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it”* (CAS 2011/A/2645, with reference to CAS 2011/A/2518 and CAS 2010/A/2283, citations omitted).



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107. In terms of the submissions of the Parties, it is noted that the Club did not put forward any evidence to justify its contention that the fines imposed in the Appealed Decisions are disproportionate and excessive whereas FIFA has provided evidence of a number of other decisions of its judicial bodies to support its position that the FIFA DC set the sanctions in the Appealed Decisions at a level both proportionate to the debts and consistent with its well-established approach to such matters.

108. In terms of the fine imposed in the Montull Appealed Decision, it provided the following comparators:

<b>Decision</b>	<b>Fine</b>	<b>Debt</b>	<b>Percentage</b>
Montull	CHF 20,000	CHF 305,682	6.54%
191676	CHF 20,000	CHF 279,720.50	7.15%
191214	CHF 20,000	CHF 352,901	5.68%
190699 PST	CHF 20,000	CHF 278,334.60	7.19%
190544 PST	CHF 20,000	CHF 401,431	4.98%
190556 PST	CHF 20,000	CHF 254,665	7.85%
191075	CHF 20,000	CHF 340,260	5.88%

109. Taking the above into account, it can be seen that the fine imposed in the Montull Appealed Decision lies at approximately the mid-point in the cases put forward by FIFA in evidence as comparators.

110. In terms of the fine imposed in the Sargatal Appealed Decision, it provided the following comparators:

<b>Decision</b>	<b>Fine</b>	<b>Debt</b>	<b>Percentage</b>
Sargatal	CHF 7,500	CHF 68,044	11.02%
FDD-6014	CHF 7,500	CHF 54,449	13.77%
FDD-6133	CHF 7,500	CHF 59,611	12.58%
FDD-5202	CHF 7,500	CHF 51,593	14.54%
200192	CHF 7,500	CHF 69,917	10.73%
200447	CHF 7,500	CHF 54,345	13.80%

111. Again, taking the above into account, this shows that the fine imposed in the Sargatal Appealed Decision is at the lower end of the spectrum of the cases FIFA has referred to in evidence.

112. In terms of the fine imposed in the Montull Appealed Decision, it provided the following comparators:

<b>Decision</b>	<b>Fine</b>	<b>Debt</b>	<b>Percentage</b>
Descals	CHF 15,000	CHF 139,791	10.73%
170155 PST ZH	CHF 15,000	CHF 113,719	13.19%
180024 PST ZH	CHF 15,000	CHF 160,769	9.33%
170213 PST ZH	CHF 15,000	CHF 122,451	12.25%
180171 PST ZH	CHF 15,000	CHF 174,078	8.62%
180046 PST ZH	CHF 15,000	CHF 110,337	13.59%
FDD-5857	CHF 15,000	CHF 179,012	8.38%

113. Finally, the above demonstrates that the fine ordered in the Descals Appealed Decision is at approximately the mid-point of the alternative cases relied upon by FIFA.

114. The Sole Arbitrator notes that FIFA submits that fines imposed by the FIFA DC are intended to have a deterrent effect, ensure that the decisions of its judicial bodies are followed but

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not of themselves to be too onerous to create unjustifiable financial difficulties to a debtor. Whilst the Club seeks to argue this is the case, it fails to provide any evidence of this alleged effect and it is telling that it failed to make any payment at all to the Creditors following the Appealed Decisions, even in part payment, so it cannot justifiably argue that but for the fines imposed, it would have settled the debts.

115. In order to determine the approach to take in conducting this assessment, the Sole Arbitrator finds that the test is not whether a sanction is in accordance with the FIFA DC's longstanding practice, but rather whether it is evidently and grossly disproportionate, whilst acknowledging that the two approaches will often arrive at the same conclusion. In support, reference is made to the findings of another CAS award in a similar matter which stated that:

*"The test to be applied by the Panel is therefore not whether the fine imposed on the Club is in accordance with the FIFA DC's longstanding practice, but rather whether the fine imposed on the Club is evidently and grossly disproportionate to the offence. In this respect, the fine imposed on the Club shall be reduced if the Panel is convinced that it is evidently and grossly disproportionate in comparison with FIFA's practice regarding the imposition of fines"* (CAS 2016/A/4595, par. 60).

116. Having considered the evidence of the case and the FIFA jurisprudence provided by FIFA during these proceedings, and the lack of any supportive evidence supplied by the Club, the Sole Arbitrator is convinced that the Appealed Decisions were not evidently and grossly disproportionate; the fines imposed were set in accordance with the principle of proportionality as well as in accordance with the FIFA DC's longstanding practice.
117. Turning to the threatened transfer ban which would be imposed on the Club if it fails to make payment of the amounts owed to the Creditors and the fines imposed by FIFA DC in the Appealed Decisions, firstly it must be noted that this sanction would only take effect if the Club fails to make those payments within 30 days, so it is a sanction which remains in the Club's power to avoid if it settles the amounts it owes.
118. The Sole Arbitrator firstly notes that it is possible for multiple sanctions to be imposed in accordance with Article 15 of the FIFA Disciplinary Code and the principle of "*ne bis in idem*" does not prevent a transfer ban being imposed as well as a fine for the same violation, providing there is a valid legal basis for so doing under the FIFA Disciplinary Code, which the Sole Arbitrator finds is the case here.
119. The Sole Arbitrator further notes that the Club argues that it will face financial difficulties if the transfer ban is imposed. Ultimately, the Club bore the burden of proof to demonstrate that a transfer ban for continued failure to pay amounts outstanding was disproportionate but the Club have failed to submit any evidence to support this argument.

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120. The Sole Arbitrator notes that CAS jurisprudence has consistently supported the legality and proportionality of the FIFA enforcement system and the related sanctions and indeed that Article 15 of the FIFA Disciplinary Code provides a clear statutory basis which reflects the principle of proportionality (cf. *inter alia* CAS 2005/A/944; CAS 2011/A/2646; CAS 2012/A/3032).
121. The Sole Arbitrator notes that a transfer ban for continued failure to adhere to a decision of the FIFA DC is not the most severe sanction which could be imposed and whilst there may be sporting and financial impacts, this can be avoided by the Club paying the debts owed given it will only be imposed once the final deadline of 30 days has passed.
122. As an aside, it should be recalled that the Club's argument of further financial difficulties arising from a transfer ban neglects to recognise that the Club is still able to sell players, thereby receiving income and saving salary cost; it is just prevented from spending money on buying players. Accordingly, the financial impact may well not be as alleged by the Club in any event.
123. Moving to the arguments put forward by the Club for the modification of the sanctions in the Appealed Decisions, which can be summarised to the Club is suffering financial difficulties, which have been exacerbated by the impact of the Covid-19 pandemic, which is affecting its ability to pay the outstanding amounts and the transfer ban may lead to the Club's bankruptcy because it may mean a proposed takeover of ownership may not take place.
124. To reiterate, the Club bears the burden of proof to support the facts and arguments it puts forward and at the outset, the Sole Arbitrator notes the Club has failed to adduce any supporting evidence, instead just simply states its position without any independent corroboration.
125. It follows that the Club has failed to discharge its burden and therefore has not provided any legitimate justification for any adjustment to the sanctions imposed in the Appealed Decisions.
126. Notwithstanding the lack of supporting evidence, the Sole Arbitrator finds that the financial problems referred to by the Club cannot excuse its failure to comply with the Appealed Decisions, and it is a well-established principle that financial difficulties to satisfy a payment obligation cannot excuse the failure to make the payment required. This is well supported by CAS jurisprudence, as follows:

*“At the same time, the Panel confirms that the difficult financial and sporting situation alleged by the Appellant is not a justification for its failure to pay its debt to the Brazilian Club. Lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment. The DC, therefore, rightly considered the Appellant in breach of its financial obligation to the Club, irrespective of the financial situation of the debtor” (CAS 2006/A/1008).*

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127. Turning briefly to the Club’s argument that the Covid-19 pandemic has adversely affected its ability to satisfy the outstanding amounts ordered under the Appealed Decisions, this can be dealt with in brief terms. Firstly, as noted by FIFA, it released guidance addressing issues related to the pandemic in April 2020, entitled Covid-19 Football Regulatory Issues, which stated, *inter alia*, as follows:

***“Enforcement of decisions rendered by the DRC, the PSC or the Disciplinary Committee in the context of RSTP matters***

*Although FIFA is fully aware of the potential financial difficulties of some clubs flowing from the obligation to comply with financial decisions rendered by the DRC, the PSC or the Disciplinary Committee, no exceptions will be granted in this regard.*

*In this context, decisions passed by the above-mentioned judicial bodies must be respected by MAs, clubs, players and coaches without exception. FIFA will continue to apply article 15 of the FIFA Disciplinary Code in the event of failure to respect these decisions”* (emphasis in original).

128. It follows therefore that the existence of the pandemic cannot be relied upon, if itself, as a valid reason not to satisfy a party’s financial obligations to another flowing from a decision of FIFA’s judicial bodies. Decisions of this nature should therefore be afforded priority in terms of other financial costs of a party to avoid further sanctions for non-compliance with a decision. It is noted that in the cases at hand, the sums involved relative to the financial position of a club playing in the China League One, at the time of the default, are modest and it is inconceivable that such sums alone would have a severely negative impact upon the finances of a club operating at that level.
129. Furthermore, the PSC Decisions were dated 20 February 2020 and sent to the Parties on 28 February 2020, a time where the financial impact of the pandemic would likely not have manifested itself to a large degree, particularly given the China League One season normally runs from late-February / March to November (noting that the season in 2020 suffered a delayed start in September 2020). Therefore, the PSC Decisions were received in the close season before losses in revenue would accrue from match postponement. Indeed, given these debts actually relate to the period August 2018 to January 2019, the suggestion that the pandemic has been the reason why the Club failed to satisfy its payment obligations is wholly unconvincing.
130. Finally, the Club’s suggestion that the imposition of the transfer ban may lead to the Club’s bankruptcy, as it may result in prospective purchasers of the Club deciding not to proceed with a takeover, is also entirely unsupported by any evidence. This is perhaps unsurprising given that it is entirely within the control of the Club to avoid a transfer ban being imposed by making payment of the outstanding amounts and moreover, in the context of the Club being acquired, the sums under discussion are relatively immaterial. The Sole Arbitrator also

notes the point made previously that a transfer ban does not necessarily mean a club will suffer further financial problems, given it allows a club to sell players and generate income.

131. Accordingly, based on all the above grounds and having taken into consideration the circumstances of the cases, the conduct of the Club, its persistent failure to make the payments owed and ordered to be paid to the Creditors, and also the seriousness of the amounts outstanding, the Sole Arbitrator finds that the disciplinary sanctions imposed by the Appealed Decisions are both appropriate and proportionate; accordingly the sanctions are not evidently and grossly disproportionate to the offences and are therefore confirmed.
132. It follows that the appeals by the Club shall therefore be dismissed.

#### **X. CONCLUSION**

133. Based on the above, and having taken into account all the arguments put forward and the evidence supplied, the Sole Arbitrator finds that:
- i. There is a legal basis for the FIFA DC to impose the disciplinary sanctions on the Club.
  - ii. The disciplinary sanctions imposed on the Club by the FIFA DC are not disproportionate and there is no justifiable reason to modify based on the Club's particular financial circumstances.
134. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeals filed on 7 August 2020 by Neimenggu Zhongyou Football Club against the decisions issued on 16 June 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* are dismissed.
2. The decisions issued on 16 June 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* are confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.