Arbitration CAS 2012/A/2900 FC Otelul Galati S.A. v. Romanian Football Federation (RFF) & Codoban Tatar Ionel, award of 12 June 2013

Panel: Mr Manfred Nan (the Netherlands), Sole Arbitrator

Football
Disciplinary proceedings against a club for not complying with its financial obligations towards a players' agent
CAS power to review the validity of national regulations
Direct application of FIFA rules at national level
CAS full power of review
Evidence brought for the first time in appeal

1. **CAS does not have a general power to review the validity of national regulations in case of non-compliance of a national association with mandatory provisions of FIFA.**

2. **The FIFA rules are not, ipso facto, directly applicable at the level of a national federation. This can only be the case if they are incorporated by the national federation rules in one way or the other.**

3. **CAS does not act as an administrative court reviewing an act of an administrative authority where, usually, the scope of review is characterised by minimum standards of scrutiny, mostly procedural, and the administrative court may not substitute its own judgement for that of the administrative authority. In contrast, it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision.**

4. **A party is in principle entitled to bring new evidence for the first time in appeal pursuant to the *de novo* principle. However, if the party intentionally fails to disclose such evidence, it acts in bad faith and shall not be entitled to rely on it.**

I. PARTIES

1. Fotbal Club Otelul Galati S.A. (hereinafter: the "Appellant" or the "Club") is a football club with its registered office in Galati, Romania. The Club is registered with the Romanian Football Federation.

2. The Romanian Football Federation (hereinafter: the "First Respondent" or the "RFF") is the national governing body of football in Romania and is affiliated to the Fédération Internationale de Football Association (hereinafter: the "FIFA").

3. Mr Codoban Tatar Ionel (hereinafter: the "Second Respondent" or the "Agent") is a players' agent of Romanian nationality, licensed by and registered with the RFF.

II. FACTUAL BACKGROUND

A. Background Facts

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

5. As of 2006, the Agent maintained a contractual relationship with the Club, pursuant to which the Agent provided specific services as a players' agent for the Club.

6. On 25 March 2011, as certain amounts due to the Agent apparently remained unpaid by the Club, a payment agreement was concluded between them (hereinafter: the "Payment Agreement").

7. On 23 August 2011, three additional representation contracts (no. 2548, no. 2549 and no. 2550) were concluded between the Agent and the Club.

B. Proceedings before the RFF National Dispute Resolution Chamber

8. On 16 March 2012, as the amounts due pursuant to the Payment Agreement and the three representation contracts apparently remained unpaid, the Agent submitted a claim against the Club for an amount of EUR 1,293,959.14 with the National Dispute Resolution Chamber of the RFF (hereinafter: the "NDRC").

9. On 26 March 2012, the Club informed the NDRC as follows: *"*[The Club] *fully acknowledges the claims of the* [Agent] *as submitted in the complaint lodged at the NDRC.* [The Club] *acknowledges to owing all the amounts mentioned by the* [Agent]*, namely 1.293.959,14 EUR (…)".*

10. On 3 April 2012, the NDRC rendered decision no. 194 (hereinafter: the "NDRC Decision") whereby it ordered the Club to payment of an amount of EUR 1,293,959.14 to the Agent.

11. No appeal was filed against the NDRC Decision within the deadline of 5 days, which therefore became final and binding on 9 April 2012.

12. On 23 April 2012, as the amounts apparently still remained unpaid, the Agent issued a letter to the Club, with a carbon copy (cc) to the legal department of the RFF, whereby the Club was informed that *"in the event you do not settle the abovementioned amount* [i.e. EUR 1,293,959.14] *within 30 days as of the date the* [NDRC Decision] *became final and enforceable* [i.e. 9 May 2012]*, we will find ourselves in the unpleasant position of requesting the sanctioning of your club pursuant to the regulations in force (ban on transfer/registration of players and point deduction)".*

13. On 30 April 2012, as the amounts apparently still remained unpaid, the Agent issued another letter to the Club, again with a carbon copy (cc) to the legal department of the RFF, and reminded it that pursuant to the Regulations on the Status and Transfer of Players of the RFF (hereinafter: the "RFF Regulations") *"if a club fails to perform its obligations as per the decision rendered by the jurisdictional bodies of the* [RFF] *within 30 days as of the date the decision became final and enforceable, such club shall be sanctioned by a ban on transfer and/or registration of players as 'new club' and by a point deduction"*. The letter also stipulated the following: *"We kindly ask you to send the confirmation of payment of the debt pursuant to* [the NDRC Decision] *until 3 May 2012 at the latest. Otherwise, we will initiate the required procedure for sanctioning of your club".*

14. On 2 May 2012, a secretary of the RFF NDRC, issued a letter to the Disciplinary Commission of the RFF, which reads as follows:

> *"Pursuant to art. 24 letter C paragraph 1 of the* [RFF Regulations]*, we hereby refer to you the enforcement of the* [NDRC Decision]*, which became final as it was not challenged by any review proceedings, which was communicated to the parties on 9 April 2012 (the parties being:* [the Agent] and [the Club]*) and based on which* [the Club] *was ordered to pay the amount of EUR 1,293,959.14, so that you order the application of disciplinary sanctions, seen as the debtor failed to fulfil its obligations as stipulated in said decision and the 30-day deadline given for the performance of said obligations has expired"*[1].

C. Proceedings before the RFF Disciplinary Commission

15. On 4 May 2012, a secretary to the Disciplinary Commission of the RFF, summoned the Agent to appear at the hearing of the Disciplinary Commission of the RFF on 10 May 2012. The hearing was finally held on 30 May 2012.

16. On 9 May 2012, the Agent and the Club concluded an agreement (hereinafter: the "Debt Rescheduling Agreement"). This Debt Rescheduling Agreement was however not notified to

[1] The Sole Arbitrator took note of the fact that the deadline for payment had not yet expired on 2 May 2012. As correctly noted by the Agent in his letter dated 23 April 2012, the deadline expired only on 9 May 2012. However, it appears this issue is not relevant as the Club still had not complied with its payment obligations by 9 May 2012.

the Disciplinary Commission of the RFF in the proceedings that were initiated on 9 May 2012. The Debt Rescheduling Agreement determines, *inter alia*, the following:

"[The Agent] *agrees that the enforcement of the* [NDRC Decision]*, i.e. the payment of the amount of EUR 1,293,959.14, be made as follows:*

The amount of EUR 1,293,959.14 shall be paid in two instalments as follows:
- *EUR 440,000 until 9 July 2012 at the latest;*
- *EUR 853,959.14 until 26 July 2012 at the latest.*

(…)

[The Agent] *agrees that the irrevocable* [NDRC Decision] *be suspended under the conditions mentioned above.*

(…)

This agreement was executed this 9th day of May 2012 in one counterpart, which shall be kept by [the Agent] *and which shall be produced before the competent commissions only if the* [Club] *complies with the deadline for the second instalment of EUR 853,959.14 as well".*

17. On 30 May 2012, the Disciplinary Commission of the RFF, without having had the opportunity to consider the Debt Rescheduling Agreement, issued decision no. 97/1 (hereinafter: the "Disciplinary Commission Decision"), ruling as follows:

"To sanction debtor [the Club] *as follows, pursuant to art. 24 letter C paragraph 1 in connection to art. 23 letters i and j and 37 item 1 letter c of the* [RFF Regulations] *as amended by the Executive Committee of the* [RFF]:

1. *by a ban on transfer and/or registration of players as 'new club' as of 9 May 2012;*
2. *by a two-point deduction applied to the points accumulated in the championship by the highest level team, i.e. the First League team* [the Club]*".*

D. Proceedings before the RFF Appeal Commission

18. On 11 June 2012, the Club filed a petition for review with the Appeal Commission of the RFF against the Disciplinary Commission Decision, with the following requests for relief:

"1. Cancellation of [the Disciplinary Commission Decision] *apparently issued by the Disciplinary Commission of the RFF.*

or secondly and in the alternative

2. Cancellation of [the Disciplinary Commission Decision] *and transfer of the case to the* [NDRC]*;*

or thirdly and in the alternative

3. Cancellation of [the Disciplinary Commission Decision] *and ruling on the merits of the disciplinary case as follows:*
- *Gradual application of the sanctions provided for under art. 85 of the Disciplinary Regulations for the failure to comply with a decision;*
- *Administration of a single sanction for the failure to comply with the* [NDRC Decision]*;*
- *Sanctioning of* [the Club] *in accordance with art. 85.1.a) of the Disciplinary Regulations by administration of the applicable sporting sanction".*

19. On 3 July 2012, the Appeal Commission of the RFF issued decision no. 71/2012 (hereinafter: the "Appealed Decision") whereby it decided:

"To dismiss the exception with regard to the inadmissibility of the review proceedings raised by [the Agent]*, by his agent, as ungrounded.*

To dismiss the proceedings for review of [the Disciplinary Commission Decision] *as lodged by* [the Club] *vs.* [the Agent]*, as ungrounded".*

20. On 20 July 2012, the grounds of the Appealed Decision were communicated to the Agent and the Club. The translation of the relevant paragraphs determine the following:

"The [Appeal] *Commission also finds that the payment obligation imposed under a final (i.e. not challenged by review) decision was not fulfilled either within the time limit of 30 days as of the communication thereof (by 9 May 2012) or within the subsequent time limit of 15 calendar days (by 25 May 2012).*

Failure to fulfil this payment obligation is subject to the provisions of art. 23 letter j of the [RFF Regulations]*, as said obligation arose from the Payment Agreement entered between the club and its Creditor as well as from the* [NDRC Decision].

The Disciplinary Commission also referred to the second thesis of article 24 letter C, paragraph 1 of the [RFF Regulations]*, as amended, which stipulates that: "point deduction shall be applied to the total number of points accumulated in the championship by the highest level team, two points being deducted every 15 calendar days of delay". Therefore, the Commission ordered a two-point deduction as more than 15 calendar days had elapsed as from 9 may 2012 when the 30 day time limit as of the communication of the* [NDRC Decision] *expired.*

Case file no. 194/CL/2012 of the [NDRC] *was appended, this being the case in which an enforceable decision had been passed with regard to the acceptance of all claims and to the agreement of the parties in respect of the* [Agent's] *claims.*

It should be noted that in the review hearing of 21 June 2012 both parties requested in writing that the case be postponed in an attempt to reach an amicable settlement of the dispute. As a result, the [Appeal] *Commission set a new hearing date for 29 June 2012.*

Furthermore, the Commission must resolve the exception raised in the hearing session of 29 June 2012 by the [Agent] *with regard to the inadmissibility of the review proceedings as grounded in the provisions of art. 37 of the* [RFF Regulations].

Pursuant to the provisions of art. 37.1 letter c of the [RFF Regulations] *as amended by the Decision of the Executive Committee no. 10 of 17 November 2012 on decision enforcement, the* [Appeal] *Commission finds that the Disciplinary Commission is in charge of enforcing the applicable sanctions against the debtor club upon notification by the Secretary of the* [NDRC] *and that "the Decisions of the Disciplinary Commission may be challenged by review". Therefore, the exception regarding the inadmissibility of the review proceedings is dismissed as ungrounded.*

With regard to the critical allegations against the challenged Decision, the [Appeal] *Commission finds that said critical allegations are the basis for the following review grounds which the Commission shall approach and assess below on an individual basis:*

1. The Decision of the Disciplinary Commission was not signed by all the members of the Commission which is a breach of art. 114.2 of the Disciplinary Regulations.

This critical allegation is dismissed as the Decision in the case file was signed by all the members of the Disciplinary Commission who attended the session of 30 May 2012 as well by the Secretary of the Commission in accordance with the provisions of art. 114.2 thesis I of the Disciplinary Regulations.

2. The Disciplinary Commission lacks jurisdiction since pursuant to art. 37 of the [RFF Regulations] *(edition 2011) if any obligations imposed by Decisions are not fully complied with, it is the Chairman of the National Dispute Resolution Chamber attached to the Romanian Football Federation who has competence with regard to the assessment of the situation and to the administering of sanctions while the Disciplinary Commission which has ordered a disproportionate sanction (deduction of points applied to the senior team) is not competent to rule in the case.*

The critical allegation may not be accepted as its conflicts with Decision no. 10 of 17 November 2011 of the Executive Committee of the [RFF] *on the amendment of the* [RFF Regulations] *and of the Disciplinary Regulations.*

Pursuant to art. 37.1 letter c of the [RFF Regulations] *as amended on 17 November 2011: "In the event that it is found that the debtor has failed to fully comply with the decision, the Secretary of the Commission shall prepare a report describing the situation and shall append the final and enforceable decision in the case. These documents shall be filed by the Secretary of the Commission to the Disciplinary Commission. With regard to the deduction of points, the Secretary shall notify the Disciplinary Commission by sending a report the first day after the due date and then every 15 days. After being notified, the Disciplinary Commission shall enforce the applicable sanctions against the debtor club".*

As these provisions have been strictly complied with, the sanction imposed cannot be considered disproportionate in respect of the infringement.

3. The Disciplinary Commission incorrectly applied the regulations (pursuant to art. 116.4 of the Disciplinary Regulations). In this case the Commission incorrectly applied the provisions of art. 24 letter c and of art. 23 latters 1) and j) of the [RFF Regulations] *and failed to apply the provisions of art. 85 of the Disciplinary Regulations.*

It is argued that the subject of this case is not the breach of any obligations in the agreements entered by and between the clubs and the players or of any financial or material obligations agreed upon between clubs but the claims of a players' agent. Therefore, it is argued that the Disciplinary Commission had competence only with regard to the disciplinary sanctions provided for by the Disciplinary Regulations and not with regard to the sanctions provided for by the [RFF Regulations] *which apply in respect of contractual obligations. Therefore, a sanction provided for in the* [RFF Regulations] *may not be enforced by the Disciplinary Commission.*

The matters relating to the ordering and enforcement of sanctions have been already approached under item 2 hereby.

The [Appeal] *Commission finds that the matters relating to the financial obligations of clubs towards players' agents are covered by the provisions of art. 23 letter j) of the* [RFF Regulations] *because any failure to comply with the financial obligations imposed by a competent commission of the* [RFF] *under an unchallenged decision is deemed to be an infringement as per art. 23 letter j), final thesis of the* [RFF Regulations] – *a matter ignored in the grounds for review.*

Furthermore, the payment obligation in case was set by the [Agent]. *Pursuant to* [the NDRC Decision], *the parties agreed on the claims of the* [Agent]. *The* [Club] *accepted in writing, in a document signed by its representative, Stan Marius, General Manager, the claims raised by the* [Agent] *and stated that it acknowledged and accepted said claims. Therefore, the club itself set said financial obligations.*

4. The Disciplinary Commission failed to apply the sanctions provided for by art. 85 of the Disciplinary Regulations which reflect the provisions under art. 64 and 146.2 of FIFA Disciplinary Code which state that "the associations shall, without exception, incorporate the following mandatory provisions of this code into their own regulations in accordance with their internal association structure: art. 33 par. 6, art. 42 par. 2, art. 58, art. 63, art. 64 …".

According to [the Club's] *critical allegations the sanctions provided for under art. 64 of FIFA Disciplinary Code the sanctions must be imposed gradually, while the Disciplinary Commission ordered directly the severest sanctions (transfer ban and deduction of points). In addition to this art. 45 of the Disciplinary Regulations of the* [RFF] *expressly provide that a single sanction may be ordered for a single infringement.*

With regard to the incorrect application of FIFA Disciplinary Code, the [Appeal] *Commission rejects* [the Club's] *allegations. The next in the FIFA Disciplinary Code refers to anyone's (including clubs) failure to comply with the decisions of FIFA bodies, commissions or instances or with the subsequent CAS appeal decisions. Art. 64 paragraph 1 letters a. b and c of the Disciplinary Code expressly provide that sanctions which are also in the Disciplinary Regulations of the* [RFF] *(for clubs – deduction of points or regulation to a lower division may be administered in combination with transfer ban – art. 64 paragraph 1 letter c of FIFA Disciplinary Code) may be imposed on a cumulative basis (and not on a gradual basis).*

It is only for the deduction of points that there should exist a correlation with the amounts due, but this is established by the national association at its own discretion.

The provisions of art. 45 of the Disciplinary Regulations cannot be invoked as they refer to "concurrent infringements". In this case it is not a double or incorrect sanction that has been imposed for a single infringement

since the Disciplinary Regulations and the Appendix on the sporting sanctions allow that several sanctions (of different legal nature) be imposed for a single infringement.

It should be noted that the first commission scheduled several hearings (10 May 2012, 23 May 2012, 30 May 2012) in order to allow the [Club] *to provide evidence that it had effected payment or had entered into an agreement in order to avoid deduction of points. However, these efforts lead to no result. Therefore, the provisions of art. 85 of the Disciplinary Regulations were applied.*

5. [The Club] *requested on grounds of art. 85 paragraph 1 letter a of the Disciplinary Regulations that only a sporting sanction be applied.*

The [Appeal] *Commission finds that such sanction may be applied in the situations expressly provided for the Regulations (art. 20.5 of the Disciplinary Code) without having, however, a mandatory character. Therefore, the Disciplinary Commission imposed the correct sanctions. As it is, this last ground for review proves that* [the Club] *is aware that all the other critical allegations are ungrounded and that it does not intend to amicable settle the dispute.*

Based on the above, the Review proceedings are dismissed as ungrounded".

21. On 26 July 2012, the Club issued an application for the lifting of the ban on transfers with the Disciplinary Commission of the RFF as the debt established in the NDRC Decision was fully paid in compliance with the deadlines contemplated in the Debt Rescheduling Agreement and provided proof of payment thereof, which was also confirmed by the Agent. This was the first time the RFF authorities were provided with a copy of the Debt Rescheduling Agreement.

22. Also on 26 July 2012, a secretary to the Disciplinary Commission of the RFF, informed the Agent and the Club that the Disciplinary Commission of the RFF, at its hearing of 26 July 2012, *"decided to accept the petition filed by* [the Club]*, to cancel the actions taken against this club with respect to the ban on transfer and/or registration of players as 'new club' and to close the proceedings (…) following the fulfilment of the financial obligations by the debtor".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 9 August 2012, thus after the Club had filed a petition for review with the Disciplinary Commission of the RFF, but before the Disciplinary Commission Appeal Decision was rendered, the Club filed a statement of appeal, accompanied by 1 exhibit, with the Court of Arbitration for Sport (hereinafter: the "CAS"). In this submission, the Appellant requested the present appeal proceedings to be adjudicated by a Sole Arbitrator.

24. On 20 August 2012, the Appellant requested the CAS Court Office to ask the First Respondent to communicate the complete case file of the disciplinary proceedings before the Disciplinary Commission of the RFF and of the appeal proceedings before the Appeal Commission of the

RFF, duly translated into English. In light of this request, the Appellant wished the deadline to file its appeal brief be suspended.

25. On 22 August 2012, the CAS Court Office invited the Respondents to inform whether they agreed with the suspension of the Appellant's deadline to file its appeal brief and that the Respondents' silence would be considered as an agreement thereto. The Respondents were also requested whether they agreed with the appointment of a Sole Arbitrator.

26. On 27 August 2012, the Second Respondent agreed to the suspension of the Appellant's time limit to file its appeal brief until the communication of the complete case file by the RFF.

27. On 28 August 2012, in the absence of any answer from the First Respondent, the CAS Court Office informed the parties that the Appellant's deadline to file its appeal brief would be suspended until the Panel, once constituted, would render a decision on the Appellant's request to have the complete case file of the First Respondent.

28. On 4 September 2012, in the absence of any objection from the Respondents to the appointment of a Sole Arbitrator, the CAS Court Office advised the parties that the name of the Sole Arbitrator would be provided in due course.

29. On 12 October 2012, pursuant to Article R54 of the Code of Sports-related Arbitration (hereinafter: the "CAS Code"), and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Sole Arbitrator appointed to decide the present matter was constituted by:

- Mr Manfred Peter Nan, attorney-at-law in Arnhem, the Netherlands, as Sole Arbitrator.

30. On 16 October 2012, on behalf of the Sole Arbitrator and pursuant to Article R44.3 and R57 of the CAS Code, the CAS Court Office requested the First Respondent to provide a copy of its complete case file related to the Appealed Decision, preferably translated into English and that the Appellant's time limit for filing its appeal brief remained suspended until further notice.

31. On 29 November 2012, the First Respondent sent the case file to the CAS Court Office.

32. On 3 December 2012, the CAS Court Office provided the parties with a copy of the case file sent by the First Respondent and informed the parties that the Appellant's deadline to file its appeal brief resumed.

33. On 7 January 2013, the Appellant filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 7 exhibits, with translations into English. The Appellant challenged the Appealed Decision of the Appeal Commission of the RFF, submitting the following requests for relief:

"a) To accept the present appeal against the challenged decision;
b) To set aside the challenged decision;
c) To state that the prerequisites to apply disciplinary sanctions against our club were not met;

d) To establish that the provisions of Article 24.C and 37 from RSTJF are not legal and could not be applied in our case as well as those of Article 85 from the Disciplinary Regulations adopted by RFF;

e) Based on the provisions of Article 146.2 of Disciplinary Code adopted by FIFA, to establish that the Article 64 from the FIFA Disciplinary Code should have been applied in our case;

f) To establish that the costs of the arbitration procedure shall be borne by the Respondents, jointly and severally;

In addition to the pleadings made in the Statement of Appeal, for the sake of good order, we kindly ask the CAS to order:

g) To annul the deduction of 2 points disposed by FRF Disciplinary Commission in the decision from 30 May 2012;

The last request aims to clarify the faith of the two points deducted by the RFF and does not modify the pleadings already made in the Statement of Appeal".

34. On 4 February 2013, the First Respondent filed its answer, with 5 exhibits, whereby it requested CAS to decide the following:

"- to dismiss the appeal,
and, in any case
- to order payment by the Appellant of all arbitration costs as well of all legal costs borne by FRF".

35. The Second Respondent did not file his answer within the granted deadline.

36. On 13 February 2013, the Appellant expressed its preference for an award to be issued only on the basis of the written submissions of the parties.

37. On 15 February 2013, the First Respondent informed the CAS Court Office that it left it for the Sole Arbitrator to decide if a hearing in this matter is needed or not.

38. On 21 February 2013, the CAS Court Office informed the parties of certain procedural decisions taken by the Sole Arbitrator in respect of evidentiary measures requested by the Appellant in its appeal brief.

39. On 8 March 2013, the Appellant sent a new document to the CAS Court Office. This document was a Report dated 19 February 2010 issued by the Secretary General of the Professional Football League jurisdiction bodies in Romania, based on which it should be concluded, according to the Appellant, that if a creditor signs and shows an agreement for the postponement of the execution of a final decision he will lose the benefit of such decision, being considered that a new legal report was created between the parties.

40. On 12 March 2013, the First Respondent claimed that the Appellant's correspondence of 8 March 2013 was submitted in breach of Article R56 of the CAS Code.

41. On 15 March 2013, the CAS Court Office informed the parties that the Sole Arbitrator had decided that there were no exceptional circumstances that would justify the document filed with

the Appellant's letter of 8 March 2013 to be added to the file. The main reason for this decision being that the Appellant failed to put forward any reason for the late filing; it remained unclear to the Sole Arbitrator why this document was only provided now, while it concerned a case in 2008/2009 and appears to be dated 19 February 2010.

42. On 20 March 2013, the Second Respondent sent a letter (his answer) to the CAS Court Office, without any exhibits, whereby he requested CAS to decide the following:

"I hereby explicitly declare my agreement for the admission of the appeal formulated by the [Club]*, in full, except for the prayer for relief which concern the legal costs incurred to the club in the present procedure. Therefore, I kindly ask CAS to acknowledge my agreement and to issue an award in this respect".*

43. On 25 March 2013, on behalf of the Sole Arbitrator, the CAS Court Office invited the Appellant and the First Respondent to provide it with their position strictly limited to the (in)admissibility of the Second Respondent's letter dated 20 March 2013.

44. On 25 March 2013, the First Respondent informed the CAS Court Office that it found that the Second Respondent's letter dated 20 March 2013 was submitted in breach with Article R56 of the CAS Code. However, despite not being invited by the Sole Arbitrator to do so, the First Respondent also commented on the merits of such letter.

45. On 2 April 2013, the First Respondent reiterated its opinion that the Second Respondent's letter dated 20 March 2013 should not be admitted to the file.

46. On 9 April 2013, the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties that the Second Respondent's letter dated 20 March 2013 was admitted to the file in order to preserve his right to be heard in the present appeal proceedings. Furthermore, the Appellant and the First Respondent were granted a deadline to supplement their positions on the merits of the Second Respondent's letter.

47. On 2 May 2013, the CAS Court Office informed the parties that no additional submissions were filed by the Appellant and the First Respondent within the deadline granted. Additionally, in light of the fact that neither of the parties specifically requested for a hearing to be held and since the Sole Arbitrator deemed himself sufficiently informed, the parties were informed of the Sole Arbitrator's decision, pursuant to Article R57 of the CAS Code, that an award would be rendered on the basis of the parties written submissions only.

48. On 6 May 2013, the CAS Court Office invited the parties to sign and return the Order of Procedure enclosed to such correspondence.

49. On 8 and 13 May 2013 respectively, the Appellant and the First Respondent signed and returned the Order of Procedure.

50. The Second Respondent – although invited twice – did not return a signed Order of Procedure.

51. The Sole Arbitrator confirms that he carefully heard and took into account all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

52. The submissions of the Club, in essence, may be summarized as follows:

- The Club argues that "*it did not enforce Decision no.194 of the NDRC*" because it was "*insolvent at that time"*. Nevertheless, on 9 May 2012 - after the Club was notified on 4 May 2012 of the initiation of disciplinary proceedings - it concluded *"an Agreement to delay and phase payment"* with the Agent, in which the Agent "*agrees to the stay of the enforcement of the NDRC Decision no. 194/03.04.2012"* provided that *"the amount of 1.293.959,14 EUR is to be paid in two instalments, as follows:*
  - *440.000 EUR not later than 9 July 2012;*
  - *853.959,14 EUR not later than 26 July 2012;*

- The Club submits that the agreement with the Agent *"was concluded in one copy only, left in the possession of the Agent, and therefore was unable to present it"* to the Disciplinary and the Appeal Commission.

- In addition, the Club refers not only to *"the ruling de novo principle"* as set out in article R57 CAS Code, but also to article R51 of the CAS Code, according to which it should be allowed to bring new evidence in the proceedings before CAS.

- Furthermore, the Club argues that because *"there was an agreement of the creditor for the enforcement of the obligation in a different manner, the RFF could no longer sanction the* [Club] *for exceeding the time limit stipulated by art. 37.1.a) of the RSTFP".*

- The Club submits that it acted *"in good faith both in relation to the Agent and the RFF"* as it *"used no legal means to postpone the issuance in favour of the Agent of an enforceable decision against it".*

- The Club points out that because it concluded the Debt Rescheduling Agreement with the Agent on 9 May 2012 it did not breach the provisions of articles 23, 24 and 37 of the RFF Regulations and therefore the prerequisites for the application of a sanction were not met.

- Furthermore, the Club argues that the RFF sanctioned the Club *"by applying regulations in breach of imperative norms of FIFA's Disciplinary Code"*. The Club submits that art. 24.C.1 of the RFF Regulations *"was not in agreement with FIFA's imperative provisions, as it did not establish a gradual sanctioning system"*. The Club points out that *"Article 24.C.1 of the RSTFP issued by*

the RFF, in both versions (…), is illegal, since its formulation is not a transposition without amendments of art. 64 of the (FIFA) Disciplinary Code. Upon adoption of art. 24.C.1, the Romanian Football Federation breached the provisions of art. 146.2 of the (FIFA) Disciplinary Code and of art. 13.1 of the FIFA Statutes".

- In continuation, the Club submits that *"during the settlement of the disciplinary case by the RFF, several procedural errors were committed. These procedural errors led to the infringement of the right to defence and the right to be heard".*

- The Club refers to article 37 of the RFF Regulations and argues that *"the RFF Disciplinary Committee did not have jurisdiction to sanction a club for failure to enforce a decision passed by the NDRC".*

- Finally, the Club argues that *"the discretionary character of the sanctions applied by the RFF (…) illegally favours other participants to the competition"* and that the deduction of points is a *"means of impairing the club in its fight for survival in the first football competition level in Romania".* The Club refers to two cases *"in which the RFF failed to apply any sanction for the non-enforcement of definitive decisions, which remain unenforced to this day".*

53. The submissions of the First Respondent, in essence, may be summarized as follows:

- The RFF argues that *"all the claims and arguments of* [the Club] *are based on the default of the Club".*

- The RFF points out that *"claims d and e as raised by SC FOTBAL CLUB* OTELUL *GALATI under section XII of the Appeal Brief have been lodged out of time",* because the Club *"has never contested the Decisions of the Executive Committee on the amending of the Regulations".*

- The RFF is of the opinion that the proceedings and sanctions against the Club complied with the regulations in force at that time.

- The RFF emphasizes that the jurisdictional bodies of the RFF applied the regulations correctly.

- In continuation, the RFF submits that the disciplinary proceedings were initiated at the request of the Agent and that during the proceedings at the Appeal Committee the Club *"never claimed that it had entered into an agreement with the creditor".*

- Furthermore, the RFF argues that although the Club and the Agent asked the Appeal Committee to postpone its decision, *"none of them said anything about an agreement signed 2 months earlier between the two parties".* The RFF adds that on 29 June 2012, the lawyer of the Agent *"sent a document to the file case and he asked that the sanctions imposed to the club to be maintained and again saying nothing about an existing agreement".*

54. The submission of the Second Respondent (his letter dated 20 March 2013) reads as follows:

- *"It is true that the* [Debt Rescheduling Agreement] *was signed only in one exemplar, kept by the undersigned as a guarantee for the execution of the* [NDRC Decision] *in full and in the time limits provided by the* [Debt Rescheduling Agreement]. *If* [the Club] *would have had an exemplar of the agreement than the* [Club] *could use it to prove that another legal relationship was created between us. This prove* [sic] *could have been sufficient for the national bodies in order to acknowledge the termination of the enforceable character of the* [NDRC Decision] *In such a situation I would have been obliged to start a new litigation against* [the Club] *in order to recover the amount due.*

- *I hereby explicitly declare my agreement for the admission of the appeal* formulated *by the* [Club]*, in full, except for the prayer for relief which concern the legal costs incurred to the* [Club] *in the present procedure. Therefore, I kindly ask CAS to acknowledge my agreement and to issue an award in this respect".*

V. ADMISSIBILITY

55. The appeal was filed within the deadline provided by Article 36.17 of the RFF Regulations and stated in the decision of the Appeal Commission of the RFF, *i.e.* within 21 days after notification of such decision. The appeal complied with all other requirements of Article R48 of the CAS Code, which is not disputed, including the payment of the CAS Court Office fees.

56. It follows that the appeal is admissible.

VI. JURISDICTION

57. The jurisdiction of CAS, which is not disputed, derives from Article 36.17 of the RFF Regulations and Article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Appellant and the First Respondent.

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

VII. APPLICABLE LAW

59. Article R58 of the CAS Code reads as follows:

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

60. A likewise approach can be found in Article 187 of the Swiss Private International Law Act of 1989 (PIL), which, *inter alia*, provides that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*.

61. In the absence of any rules of law chosen by the parties, the RFF Statutes and regulations shall apply primarily, and Romanian law subsidiary, as this is the law of the country in which the Appeal Commission of the RFF is domiciled.

62. No issue of applicable law arose in the present case.

VIII. MERITS

A. The Main Issues

63. In view of the above, the main issues to be resolved by the Sole Arbitrator are:

a) Did the RFF Disciplinary Commission have jurisdiction to open disciplinary proceedings against the Club?

b) Do the RFF Regulations violate mandatory provisions of the FIFA Disciplinary Code, and, if so, what are the consequences thereof?

c) Can the Debt Rescheduling Agreement be taken into account in the present appeals arbitration proceedings and were the sanctions imposed by the Appeal Commission of the RFF proportional?

a. Did the RFF Disciplinary Commission have jurisdiction to open disciplinary proceedings against the Club?

64. The Club argues that in light of the wording of article 37(1)(c) of the RFF Regulations, only the President of the NDRC or a member designated by the latter is competent to verify the conditions and to sanction the Club. In the case at hand, the verification of the conditions and the application of the sanction were made by the RFF Disciplinary Commission, despite the fact that the dispute regarding the non-enforcement was under the exclusive jurisdiction of the President of the RFF NDRC.

65. The RFF maintained that pursuant to article 37(1)(c) of the RFF Regulations, as amended on 17 November 2011, the NDRC Decision was conveyed to the Disciplinary Commission with a view to its enforcement by the Disciplinary Commission.

66. The Agent did not provide any specific position in this respect.

67. According to the Club, article 37(1)(c) of the RFF Regulations is applicable, in the translation provided by the Club:

"The enforcement of irrevocable / definitive and enforceable decisions is made ex officio as follows:

c) if it is noted that the decision was not fully enforced by the debtor, the Committee Secretary drafts a report to be presented to the President of the RFF's NDRC, PLF's DRC or CSP of the CFA/BMFA, as appropriate. The President of the Committee, or a member thereof designated by the President, issues a decision on the application of the sanctions. The decision is irrevocable and is notified to the competitions department in view of non-scheduling the sanctioned club to official matches and the ban on the right to transfer players".

68. The RFF adduced that on 17 November 2011, certain amendments were made to the RFF Regulations. After these alterations article 37(1)(c) of the RFF Regulations provided the following in the translation provided by the RFF:

"Irrevocable decisions shall be enforced ex officio as follows:

c) in the event that it is found that the debtor has failed to fully comply with the decision, the Secretary of the Commission shall prepare a report describing the situation and shall append the final and enforceable decision in the case. These documents shall be filed by the Secretary of the Commission to the Disciplinary Commission. With regard to the deduction of points, the Secretary shall notify the Disciplinary Commission by sending a report the first day after the due date and then every 15 days. After being notified, the Disciplinary Commission shall enforce the applicable sanctions against the debtor club. The decisions of the Disciplinary Commission may be challenged by review. Lodging of a review does not suspend enforcement of the challenged decision. The decisions of the Disciplinary Commission and of the [Appeal] *Commission shall be communicated to the Competitions Department of the Romanian Football Federation/Professional Football League/County Football Association".*

69. The Club argues that the RFF Regulations that were available on the official website of the RFF (lastly checked on 23 December 2012) did not contain the amendments that were allegedly made on 17 November 2011.

70. The RFF maintains that on 17 November 2011 the Executive Committee of the RFF decided to amend the RFF Regulations and the RFF Disciplinary Regulations so that sanctions against those that fail to comply with final and irrevocable decisions passed by the RFF NDRC should be dealt with by the RFF Disciplinary Commission. It argued that this decision was served on its affiliated members in compliance with article 34(10) of the RFF Statutes.

71. According to the RFF, on 18 June 2012, the provisions regarding the enforcement of decisions and sanctions were amended again and also this decision was published on the official website of the RFF. Therefore, the RFF is of the opinion that between 17 November 2011 and 18 June 2012, the RFF Regulations as amended on 17 November 2011 were in force, according to which the Disciplinary Commission of the RFF was in charge of enforcing sanctions.

72. The Sole Arbitrator noted that article 34(10) of the RFF Statutes determines the following:

"The decisions of the Executive Committee shall be published on the official website of [RFF]*, except for confidential decisions. The Secretary General of* [the RFF] *shall establish whether a decision is public or confidential. The posting on the website shall be deemed as an official form of communication to any person concerned".*

73. The Sole Arbitrator finds that the RFF provided sufficient evidence by enclosing print screens to its answer, showing that indeed on 17 November 2011, it complied with its statutory requirements by publishing the decision dated 17 November 2011 of its Executive Committee on its website. Moreover, the press release even indicated that amendments of the RFF Regulations and the RFF Disciplinary Regulations were debated and approved and that the most important issue was *"related to the enforcement of such Decisions by the FRF/LPF* ***Disciplinary Commission****"* and that *"[i]f a club is sanctioned by the* ***Disciplinary Commission*** *it may open the review proceedings against said Decision (…)"* (emphasis added by the Sole Arbitrator). Consequently, the Sole Arbitrator finds that the Club was subject to the RFF Regulations as amended on 17 November 2011.

74. Taking into account that the NDRC Decision was rendered on 3 April 2012 and that the RFF Regulations were amended on 17 November 2011, the Sole Arbitrator finds that the version of article 17(1)(c) of the amended RFF Regulations as provided by the RFF shall apply to the present dispute.

75. The amended RFF Regulations specifically grant the Disciplinary Commission of the RFF the authority to impose disciplinary measures on a debtor that failed to comply with final and enforceable decisions within 30 days. As the Club based its argument solely on the "old" version of the RFF Regulations, its claim that the Disciplinary Commission of the RFF had no jurisdiction to render a decision in this case is to be dismissed.

76. Consequently, the Sole Arbitrator finds that the Disciplinary Commission of the RFF had jurisdiction to decide on the disciplinary measures to be imposed on the Club.

b. *Do the RFF Regulations violate mandatory provisions of the FIFA Disciplinary Code, and, if so, what are the consequences thereof?*

77. The Club alleges that a relationship of subordination exists between the international regulations adopted by FIFA and the national regulations adopted by the RFF if the regulations of FIFA have an imperative character. According to the Club, this means that the provisions of national regulations may not be contrary to those of the international regulations. Imperative norms *"within the sports law transnational legal order are mandatory within the sports law national legal order, except in those cases where they violate the public order of the state legal order".*

78. According to the Club, article 146(2) of the FIFA Disciplinary Code imposes upon the national associations the obligation to include, without amendments, the content of article 64 of the

FIFA Disciplinary Code in their own regulations. In spite of this, the RFF adopted a different version of article 64 of the FIFA Disciplinary Code in article 24(c)(1) of the RFF Regulations. According to the Club, the fundamental differences between the two are the following:

a) The regulation imposed by FIFA establishes a system for the gradual application of sanctions in those cases where a decision is not enforced by a club; the regulation adopted by the RFF establishes the direct application of the most drastic sanction, the deduction of points;

b) The regulation imposed by FIFA establishes the necessity of sending a warning prior to the application of the sanction of point deduction, notified to the club. The RFF regulation stipulates no such necessity of sending a warning;

c) The regulation imposed by FIFA establishes the granting of a final deadline to enforce the obligations stipulated in the decision; the RFF regulation does not establish such a deadline granted to the club in view of performing the obligations set in the definitive decision.

79. In light of the contradiction between article 64 of the FIFA Disciplinary Code and article 24(c)(1) of the RFF Regulations, the Club finds that article 64 of the FIFA Disciplinary Code should prevail. The Club referred the Sole Arbitrator to CAS 2007/A/1329 and CAS 2007/A/1330 in order to show that FIFA strictly applies the provisions of article 64 of the FIFA Disciplinary Code by first imposing a warning, subsequently a sporting fine and, as a last resort, if the club fails to comply, with the deduction of points.

80. Finally, the Club argues that the RFF tried to change its regulations to make them in compliance with the FIFA Disciplinary Code, referring to a decision of the RFF Executive Committee adopted on 18 June 2012, and asked the Panel to ask the RFF to submit a copy of the decision of the Executive Committee adopted on 18 June 2012.

81. The Sole Arbitrator noted that article 64 of the 2011 FIFA Disciplinary Code determines the following:

"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 subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):

a) will be fined for failing to comply with a decision;

b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;

c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;

d) (only for associations) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced.

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

3. If points are deducted, they shall be proportional to the amount owed.

4. A ban on transfer-related activity may also be imposed against natural persons.

5. Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly.

6. Any financial or non-financial decision that has been pronounced against a club by a court of arbitration within the relevant association or National Dispute Resolution Chamber (NDRC), both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations.

7. Any financial or non-financial decision that has been pronounced against a natural person by a court of arbitration within the relevant association or NDRC, both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision or by the natural person's new association if the natural person has in the meantime registered (or otherwise signed a contract in the case of a coach) with a club affiliated to another association, in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations".

82. Article 146(2) of the FIFA Disciplinary Code determines the following:

"The associations shall, without exception, incorporate the following mandatory provisions of this code into their own regulations in accordance with their internal association structure: art. 33 par. 6, art. 42 par. 2, art. 58, art. 63, art. 64, art. 99 par. 2 and art. 102 par. 3. Pursuant to art. 146 par. 3, the associations do, however, have some freedom with regard to the fines stipulated in art. 58 and art. 64".

83. The RFF provided a copy of the decision adopted by the Executive Committee of the RFF on 18 June 2012 with its answer. The RFF does not deny that by this amendment, the sanctioning system of the RFF indeed became more gradual by introducing an additional grace period and the imposition of a fine before sanctioning a club with a ban from signing and/or registering new players and a point deduction. However, the RFF maintained that the proceedings and sanctions against the Club complied with the RFF Regulations in force at that time. The RFF provided evidence that on 26 January 2012, it asked FIFA about its opinion regarding compatibility of article 24(c)(1) of the RFF Regulations with article 64 of the FIFA Disciplinary Code.

84. On 30 January 2012, FIFA informed the RFF that the article 64 of the FIFA Disciplinary Code represents a minimal requirement: *"Should a member association consider that harsher sanctions to the ones stipulated in the FDC may be applied at national level to force its members to comply with decisions pronounced by its deciding bodies, it shall be at liberty to do so. However, and for the sake of completeness, we are of the opinion that a member association would not be in a position to provide in its disciplinary code for*

sanctions more lenient than the ones mentioned in art. 64 FDC". FIFA added that the above was only of a purely informative nature and, therefore, without prejudice whatsoever.

85. The Sole Arbitrator noted that FIFA's letter is dated 30 January 2012 and that this letter was therefore issued before the RFF became aware of the present dispute between the Club and the Agent as the latter only filed its claim on 16 March 2012. The Sole Arbitrator finds this to be a compelling reason to consider the RFF's question to FIFA to be genuine and not a way to try and create a legal situation to the detriment of the Club in this specific matter.

86. Nevertheless, even if the RFF Regulations were not in compliance with mandatory provisions of the FIFA Disciplinary Code, it is consistent CAS jurisprudence that CAS does not have a general power to review the validity of national regulations in case of non-compliance of a national association with mandatory provisions of FIFA. In another CAS award, a Panel clarified that *"CAS panels do not have a general power to review the validity of regulations"*. This *"does not prevent them to take into account issues regarding the validity of regulations in the context, and for the purpose of the review of their application in a particular case. Thus for example, a CAS Panel is perfectly entitled, and in fact bound not to apply regulations which would be contradictory with fundamental principles of law or contradictory to regulations of "higher rank" (to the extent and subject to the fact that such are effectively applicable, see below) when it reviews their application in a particular case"* (CAS 2009/A/1889, §77-78).

87. In the present case, the Sole Arbitrator has not been provided with evidence that the RFF Regulations contain a specific provision subjecting the RFF Regulations to the FIFA Disciplinary Code in case of any contradictions or inconsistencies between them. As such, the FIFA Disciplinary Code is not directly applicable to a national Romanian dispute that is primarily governed by the RFF Regulations.

88. The same CAS Panel continued as follows: *"The FIFA rules are not, ipso facto, directly applicable at the level of a national federation. This can only be the case if they are incorporated by the national federation rules in one way or the other. Indeed, FIFA regulations do not constitute imperative State Law but private regulations which apply based on a contractual or similar basis. In the absence of a corresponding mechanism of incorporation enshrined in the regulations of the concerned national federation, the fact that national federation regulations can be in contradiction with FIFA rules does not therefore imply that such are to be automatically considered as null and void or ineffective.* […] *It follows from the above that the application of the* [national] *regulations at domestic level is not affected by the fact that such may be contrary to FIFA regulations"* (CAS 2009/A/1889, §146-149, with further references for a confirming precedent in the field of doping rules to: CAS 2008/A/1576 and CAS 2008/A/1628). In another matter before CAS dealing with non-compliance of a national association with the FIFA Statutes it was held by a CAS Panel that *"FIFA has the authority to impose sanctions on the Federation in question but there is no automatic modification of the national Federation's Statutes due to such non-compliance"* (CAS 2008/A/1600, §5.19).

89. The Sole Arbitrator fully adheres to the above-mentioned CAS precedents. Consequently, the Club's argument insofar as it seeks the direct application of article 64 of the FIFA Disciplinary Code over article 24(c)(1) of the RFF Regulations is rejected.

c. Can the Debt Rescheduling Agreement be taken into account in the present appeals arbitration proceedings and were the sanctions imposed by the Appeal Commission of the RFF proportional?

90. The final issue to be adjudicated by the Sole Arbitrator is whether the Club was correctly sanctioned by the Appeal Commission of the RFF. In this respect, it is important whether the Debt Rescheduling Agreement concluded between the Club and the Agent on 9 May 2012 can be considered for the first time in these appeal proceedings, while the Disciplinary Commission of the RFF and the Appeal Commission of the RFF did not have the opportunity to take such document into account.

91. The Sole Arbitrator noted that it remained undisputed between the parties that the Debt Rescheduling Agreement was concluded in one copy only, left in the possession of the Agent, as a warranty for the strict and timely performance of the obligations undertaken. This was allegedly a condition of the Agent for the conclusion of the Debt Rescheduling Agreement. However, the parties' positions differ in respect of what role this Debt Rescheduling Agreement should play in the present appeal proceedings.

92. The Club maintains that it obviously did not have the option to refuse the Agent's conditions and thus concluded the Debt Rescheduling Agreement in one copy only. However, the Club maintains that although the Debt Rescheduling Agreement could not be presented during the proceedings before the RFF Disciplinary Commission or the Appeal Commission of the RFF, it is presented within the appeal proceedings before CAS, so that CAS may declare, within the same dispute, that the conditions for the Club to suffer such a drastic sanction as the deduction of points are not met. This is the same dispute, which allows for the delivery of a decision different from that of the national bodies, on the basis of the new evidence brought. According to the Club, it would be absurd to think that only the evidence already presented before the first instance bodies can be considered before CAS (in relation to the CAS, which is the first arbitration body, the first instance in the true sense of the word hearing the present case, both national bodies are mere internal committees of the RFF). In fact, according to Article R57 of the CAS Code *"the Panel shall have full power to review the facts and the law"* (the ruling *de novo* principle). The possibility to bring new evidence also results from Article R51 of the CAS Code according to which *"the Appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely"*.

93. The RFF is of the opinion that the Club's arguments based on the Debt Rescheduling Agreement cannot be accepted since the Club attempted to delay the resolution of the case for various reasons but it never claimed that it had entered into the Debt Rescheduling Agreement with the Agent. According to the RFF, the fact that the Club and the Agent signed only one copy of the Debt Rescheduling Agreement and that this copy was retained by the Agent is the default of the Club. It is the default of the Club that it failed to take any action aimed at requesting the Agent to inform the Disciplinary Commission of the RFF of this agreement. Moreover, the RFF argues that the Club and the Agent requested the Appeal Commission of the RFF to postpone its decision, but none of them informed it of an agreement signed two months earlier.

94. The Agent maintained the following in respect of the Debt Rescheduling Agreement: *"It is true that the* [Debt Rescheduling Agreement] *was signed only in one exemplar, kept by the undersigned as a guarantee for the execution of the* [NDRC Decision] *in full and in the time limits provided by the* [Debt Rescheduling Agreement]. *If* [the Club] *would have had an exemplar of the agreement than the* [Club] *could use it to prove that another legal relationship was created between us. This prove* [sic] *could have been sufficient for the national bodies in order to acknowledge the termination of the enforceable character of the* [NDRC Decision]. *In such a situation I would have been obliged to start a new litigation against* [the Club] *in order to recover the amount due".*

95. The Sole Arbitrator notes that Article R51 of the CAS Code determines the following:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely or shall inform the CAS Court Office in writing that the statement of appeal shall be considered as the appeal brief, failing which the appeal shall be deemed withdrawn".

96. Article R57 of the CAS Code reads as follows:

"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

97. The Sole Arbitrator noted that it is consistent jurisprudence of CAS that any procedural defects which occurred in the internal proceedings of a federation are cured by arbitration proceedings before the CAS (CAS 2008/A/1547, CAS 2001/A/345, with further reference to CAS 96/156, award of 6 October 1997, p. 61 with reference to the decisions of the Swiss Federal Tribunal 116 Ia 94 and 116 Ib 37).

98. Other CAS jurisprudence shows that the type of decision which an appeal panel may make is described in the second sentence of Article R57 of the CAS Code which states that the appeal panel *"may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".* This description does not seek to limit the powers of the appeal panel or that it can only act if it finds error in the initial decision or award (CAS 2008/A/1574). Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made (CAS 2009/A/1880-1881, §18). CAS does not act as an administrative court reviewing an act of an administrative authority where, usually, the scope of review is characterised by minimum standards of scrutiny, mostly procedural, and the administrative court may not substitute its own judgement for that of the administrative authority. Typically, administrative courts may only control the fairness and correctness of the previous procedure, the way in which the decision was arrived at, the reasons given for the decision, the competence of the body adopting the decision and the like. In contrast, it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision (CAS 2009/A/1880-1881, §22).

99. The Sole Arbitrator adheres to the jurisprudence referred to above. Accordingly, in the opinion of the Sole Arbitrator, a party is in principle entitled to bring new evidence for the first time in appeal pursuant to the *de novo* principle. However, the Sole Arbitrator is of the opinion that in the present matter an exception is to be made. By concluding the Debt Rescheduling Agreement, but intentionally failing to disclose such document to the relevant authorities of the RFF, the Club and the Agent knowingly obstructed a proper decision-making process and thereby acted in bad faith towards the RFF.

100. Contrary to what the Club alleges, the Sole Arbitrator does not agree with the position of the Club insofar as it argues that it *"obviously did not have the option to refuse the Agent's conditions and thus concluded the Debt Rescheduling Agreement in one copy only"*. The Sole Arbitrator is of the opinion that the Club freely entered into such agreement and should bear the consequences of its agreement to the confidentiality thereof. The fact that the Agent might have objected to the disclosure of the Debt Rescheduling Agreement to the RFF Disciplinary Commission is of no avail to the Club, as the disciplinary proceedings are a matter between the RFF and the Club, to which the Agent is not a direct party. The Sole Arbitrator finds that the issue regarding the settlement of the debt between the Club and the Agent is to be distinguished from the issue regarding the enforcement of the NDRC Decision between the Club and the RFF. The fact that a debtor and a creditor reach an agreement regarding an extension of the deadline for the debtor to comply with its payment obligations towards the creditor, is not, *ipso facto*, a fact to be taken into consideration in disciplinary proceedings between the creditor and the disciplinary body. Although the Debt Rescheduling Agreement determined that *"[t]he* [Agent] *agrees to the stay of the enforcement of the* [NDRC Decision]*, in the conditions stipulated above"*, the Sole Arbitrator finds that the Club and the Agent did not have the authority to bind the RFF in this respect.

101. By intentionally failing to inform the Disciplinary Commission and the Appeal Commission of the RFF of the Debt Rescheduling Agreement and in the absence of a valid argument for failing to do so, the Sole Arbitrator finds that the Club cannot now suddenly rely on the Debt Rescheduling Agreement. The Club should at least have informed the RFF authorities that a payment agreement had been concluded between the Club and the Agent based on which the imposition of disciplinary sanctions had to be postponed.

102. Turning his attention to the alleged disciplinary infringement of the Club, the Sole Arbitrator noted that the Appeal Commission of the RFF based its Appealed Decision on the following regulatory provisions:

Article 23 (i) and (j) of the RFF Regulations:

> *"The following represent violations of these regulations:*
>
> *(i) the failure to observe the mandatory character and the deadlines for the payment of the rights set by the RFF, PFL or CFA commissions, as appropriate, based on contractual clauses or contracts concluded with the players;*
>
> *(j) the failure to observe the mandatory character and the deadlines for the payment of training/promotion/solidarity compensation, as well as the settlement of other financial or material*

obligations set out by clubs and the RFF, PFL or CFA relevant commissions, as the case may be; (…).

Article 24(c)(1) of the RFF Regulations:

"For the offences stipulated in art. 23 let. i and j, if a club does not perform its obligations within 30 days from the date the decision becomes final and enforceable, it is sanctioned with a ban on the right to transfer and/or register players as assignor club and the deduction of points. The deduction of points is applied to those accrued in the championship by its highest level team, following which, each 15 calendar days of delay in payment, the respective team be deducted two more points. The aforementioned sanctions apply for 90 days, after which the respective club's team is excluded from all competitions".

Article 37.1(c) of the RFF Regulations:

"In the event that it is found that the debtor has failed to fully comply with the decision, the Secretary of the Commission shall prepare a report describing the situation and shall append the final and enforceable decision in the case. These documents shall be filed by the Secretary of the Commission to the Disciplinary Commission. With regard to the deduction of points, the Secretary shall notify the Disciplinary Commission by sending a report the first day after the due date and then every 15 days. After being notified, the Disciplinary Commission shall enforce the applicable sanctions against the debtor club. The decisions of the Disciplinary Commission may be challenged by review. Lodging of a review does not suspend enforcement of the challenged decision. The decisions of the Disciplinary Commission and of the [Appeal] *Commission shall be communicated to the Competitions Department of the Romanian Football Federation/Professional Football League/County Football Association".*

103. Based on the provisions set out above, the Sole Arbitrator finds that the Disciplinary Commission and the Appeal Commission of the RFF correctly applied the RFF Regulations and could decide to deduct two points from the Club's first team. The Sole Arbitrator finds that because the Disciplinary Commission and the Appeal Commission of the RFF did not have the opportunity to take the Debt Rescheduling Agreement into account, they did not come to a wrong conclusion in this respect or imposed a disproportionate sanction on the Club, nor did the Club prove that the sanctions imposed on the Club in the Appealed Decision are disproportionate to the offence.

104. In respect of the alleged arbitrariness of the RFF in imposing sanctions on member clubs that failed to comply with final and binding decisions, the Sole Arbitrator is of the opinion that the two cases referred to by the Club appear to be different from the matter at hand. In the first case (CAS 2010/A/2461) a Romanian club was ordered to pay an amount of EUR 4,000. In the opinion of the Sole Arbitrator this is quite different from failing to comply with a decision ordering to pay an amount of EUR 1,293,959.14, as in the present case. Moreover, the Sole Arbitrator is of the opinion that he is insufficiently informed about the factual circumstances of such case to hold that indeed the RFF unjustly failed to enforce such final and binding decision. The second case referred to by the Club (CAS 2011/A/2613) is also different as apparently the player who was entitled to a payment from the club requested the RFF not to impose any sporting sanctions, whereas in the present case, the Agent indirectly requested the RFF to impose sporting sanctions on the Club. In the absence of further details of these two

cases, the Sole Arbitrator finds himself insufficiently informed to draw any conclusions from the alleged facts deriving from these "similar" cases.

105. The Sole Arbitrator has therefore no justifiable grounds for modifying the sanctions imposed in the Appealed Decision.

106. Finally, in respect of any alleged procedural flaws in the proceedings before the RFF, the Sole Arbitrator is of the opinion, with reference to the jurisprudence cited above, that procedural flaws in the proceedings before the RFF authorities, if any, were, or at least could have been repaired in the present appeal proceedings. Subsequently, the Sole Arbitrator finds that the Club's right to defence and its right to be heard has not been impaired.

107. Consequently, the Sole Arbitrator finds that the Club's appeal has to be dismissed. The Club cannot rely on the content of the Debt Rescheduling Agreement in the present appeals arbitration proceedings. Furthermore, the Sole Arbitrator finds that the RFF Regulations have been applied correctly and that the Disciplinary Commission and the Appeal Commission of the RFF could decide to deduct two points from the Club's first team.

B. Conclusion

108. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Sole Arbitrator finds that:

a) The RFF Disciplinary Commission did have jurisdiction to adjudicate the matter.

b) The RFF Regulations do not violate mandatory provisions of the FIFA Disciplinary Code.

c) The Club cannot rely on the content of the Debt Rescheduling Agreement in the present appeals arbitration proceedings and the Appeal Commission of the RFF was entitled to deduct two points from the first team of the Club as a disciplinary offence was committed by failing to pay the amount awarded in the RFF NDRC decision within the stipulate timeframe.

109. Any further claims or requests for relief are dismissed.

IX. COSTS

110. Article R65.1 of the CAS Code provides that:

"The present Article R65 is applicable to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body (…)".

111. The Sole Arbitrator noted that the present case is of a disciplinary nature, however, since the Appealed Decision was rendered by a disciplinary body of a national federation Article R65 of the CAS Code does not apply.

112. Accordingly, the costs are to be determined pursuant to Article R64.4 and R64.5 of the CAS Code.

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Otelul Galati S.A. on 9 August 2012 against the Decision issued on 3 July 2012 by the Appeal Commission of the Romanian Football Federation is dismissed.

2. The Decision issued on 3 July 2012 by the Appeal Commission of the Romanian Football Federation is confirmed.

3. (…).

4. (…).

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