Arbitration CAS 2021/A/7915 Javier González López v. Hapoel Tel Aviv FC & Fédération Internationale de Football Association (FIFA), award of 7 November 2022

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football
Request to initiate disciplinary proceedings for failure to comply with a CAS award
Res judicata
Reasons warranting a stay of the proceedings
Relationship between enforcement (art. 15 FDC) and main (art. 24ter RSTP) proceedings in sporting succession
Nature of the matter in dispute
Autonomy of the parties to derogate from the competence of the FIFA adjudicatory bodies
Effects of sporting succession

1. **The plea of *res judicata* has both positive and negative effects. According to the positive effect the parties to the decision that has *res judicata* effect can rely on the findings of said decision in subsequent proceedings. The negative effect of *res judicata* consists of preventing a new forum to reconsider an issue already previously decided. The question of *res judicata* is, in principle, a procedural question that is governed by the *lex fori*, i.e., Swiss law. Under Swiss law, the negative effect of *res judicata* can be invoked if the claim at issue is identical to the one that has already been adjudicated with final effect. There is identity within the above meaning in case there is both identity of the parties and of the subject matter. The subject matter of the dispute is determined by the individualized claims and by the facts invoked in support of it. Only certain adjudicatory decisions enjoy *res judicata* effects, such as – e.g., court decisions or true arbitral awards. Decisions by association tribunals are not among the ones that enjoy *res judicata* effects like court decisions. Under Swiss law, the *res judicata* effect of an award is limited to decisions on the merits by which the arbitral tribunal resolves the dispute before it in whole or in part. If, however, the tribunal did not take a decision on the merits but refused to adjudicate the matter because it qualified the request as inadmissible, there is no room to apply the concept of *res judicata* even by analogy.**

2. **Independently of *lis pendens* there may be reasons that warrant a stay of the proceedings. However, any suspension of the arbitration may result in a delay or denial of justice. In view of these negative effects of a stay, an arbitral tribunal should in case of doubt give priority to the principle that the proceedings must be conducted within reasonable time. Therefore, an arbitral tribunal seated in Switzerland may suspend the arbitration in exceptional circumstances only, i.e., either based on specific statutory provisions or for other compelling reasons. Such reasons may exist – e.g. – if events occur which affect the legal existence or the capacity of a party, or if questions need to be clarified which are important for the outcome of the case but lie outside the jurisdiction of the arbitral tribunal.**

3. Absent any specific provision in the FIFA regulations, "enforcement proceedings" based on Article 15 of the FIFA Disciplinary Code (FDC) and "main proceedings" based on Article 24ter of the FIFA Regulations on the Status and Transfer of Players (RSTP) against an alleged sporting successor cannot be coordinated via *lis pendens* (in case of simultaneous proceedings) or *res judicata* (in case of subsequent proceedings), because in enforcement and main proceedings the matter is different, different procedural rules apply and different adjudicatory bodies are competent. Furthermore, the decisions of the Players' Status Committee (PSC) and the Disciplinary Committee (DC) are independently appealable to the CAS. To prevent contradictory decisions, which is neither in the interest of the parties nor in the interest of good administration of justice, there needs to be some kind of coordination between both proceedings. Otherwise, a creditor – e.g. – who failed in the enforcement proceedings, because the DC did not qualify the "new club" as a sporting successor of the original debtor, could relitigate the question of sporting succession via Articles 24ter, 22 RSTP. Vice versa, the "new club" that was found to be a sporting successor in the enforcement proceedings could file a request for negative declaratory relief that he is not a sporting successor before the PSC/DRC. However, if the DC has not decided on the substantive issue of sporting succession but has dismissed the request for enforcement as inadmissible for procedural reasons, main proceedings initiated before the PSC cannot be considered a circumvention of the rules, nor do they lack a legitimate reason.

4. It follows from Article 24ter RSTP that a claim against the (alleged) sporting successor can be pursued as if the latter was the original debtor, i.e., that the alleged sporting successor *"steps into the procedural shoes of the original debtor"*. This, however, is only possible, if the claim against the sporting successor is of the same nature as the claim against the original debtor. It follows, thus, that sporting succession – as e.g., in cases of legal succession, legal or contractual assumption of debt – does not change the nature of the matter in dispute.

5. The introductory sentence of Article 22(1) RSTP states that it is within the parties' autonomy to derogate from the competence of the adjudicatory bodies of FIFA. While this provision only refers to a jurisdiction clause conferring competence to state courts, the autonomy of the parties is not confined to jurisdiction clauses. If, as Article 22(1) lit. c) RSTP explicitly states, the parties may refer a dispute to a national arbitral tribunal, nothing prevents them from opting out from Article 22 RSTP also in favour of the CAS.

6. The effects of sporting succession are akin to a legal assumption of debts. The sporting successor is liable for a creditor' claim arising from an employment contract as if he was a party to the contract. The assumption of an external debt leads to the transfer of ancillary rights within the meaning of Art. 178 para. 1 of the Swiss Code of Obligations from the debtor to the assignee. The arbitration agreement is such an ancillary right. It follows that it is binding on the receiving party, with certain exceptions. This is self-evident in the case of a privative repossession, since it implies a succession by particular title in the capacity of passive subject of the obligation, a new debtor taking the place

of the old one. A similar effect has also been recognised in the case of the cumulative assumption of a debt, even though in this case there is no change of debtor, but the intervention of a second debtor who becomes a joint and several debtor alongside the original debtor. Whether the assumption of debt is contractual or statutory is not material in order to extend the scope of the dispute resolution clause. According to Swiss law, also a partner of simple partnership (who by law assumes the debts of the partnership) is bound by the dispute resolution clause contained in a contract between the partnership and a third person. Since the sporting successor does not enter into a separate obligation vis-à-vis the creditor but becomes the passive subject of the guaranteed debt of the sporting predecessor, the scope of the original dispute resolution clause also extends to the alleged sporting successor.

I. PARTIES

1. Mr. Javier González López (the "Appellant") is a Spanish football coach.

2. Hapoel Tel Aviv FC (the "First Respondent") is a professional football club with registered office in Tel Aviv. The activities of "Hapoel Tel Aviv FC" are managed by a company named Poalei Tel Aviv Holdings Ltd. The First Respondent is registered with the Israel Football Federation (IFA), which in turn is affiliated with the *Fédération Internationale de Football Association*.

3. The *Fédération Internationale de Football Association* (the "Second 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.

4. The Appellant, the First Respondent and the Second Respondent are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

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

A. Background Facts

6. On 9 March 2015, the Appellant signed an employment contract with the club Hapoel Tel-Aviv FC (hereinafter referred to as the "Employment Contract"). The Hapoel Tel-Aviv FC is the trading name of a professional football club, whose set of rights, assets and liabilities were held at the time by a company called Harel Holdings Ltd. ("Harel Holding").

7. The Employment Contract contained the following dispute resolution clause in clause 7:

> The parts, with independence of any jurisdiction that would correspond to them due of their condition and/or nationality and, very particularly, with express renounce to submitting the questions derived from this agreement to the courts dependent on the Israeli football League and/or on the Israel's football Federation and to the courts of Israel's Justice, agree that any question derived from the application, interpretation, application and/or execution of this agreement will be solved by the Arbitral Court of the Sport (TAS/CAS), that depends of the Olympian International Committee, based in Lausanne, in conformity with its normative of procedure, being applied to the controversy the international sports regulations of the FIFA and of the UEFA and of the Private Swiss Law, promising itself the parts to respect and to fulfill strictly the resolution that could be dictated by the Arbitral Court of the Sport (TAS/CAS) , and renounce expressly both parts to be applied to the controversy the law and the legal forecasts of their countries of residence and /or nationality, that is to say, Spanish and/or Israeli.

8. On the 4 September 2015, Harel Holding terminated the Employment Contract with the Appellant.

B. The Proceedings CAS 2015/O/4261

9. On 22 October 2015, the Appellant filed a Request for Arbitration before the Court of Arbitration for Sport (hereinafter also referred to as – the "CAS") against Hapoel Tel Aviv FC. The latter is a trading name for a club that was owned, run and administered at the time by a company called Harel Holdings. The proceedings were managed by the CAS Ordinary Division and docketed under the reference CAS 2015/O/4261 *Cesar Domingo Mendiondo Lopez & Javier Gonzalez Lopez v. Hapoel Tel-Aviv FC* (hereinafter also referred to as "CAS 2015/O/4261").

10. On 22 June 2016, the sole arbitrator in the above procedure issued an award (hereinafter also referred to as the "CAS Award"), *inter alia*, ruling that:

> *"1. The claim filed by Mr Cesar Domingo Mendiondo Lopez & Javier Gonzalez Lopez is upheld in its entirety.*
>
> *2. Hapoel Tel-Aviv* [Harel Holdings][1] *is ordered to pay Mr Javier Gonzalez Lopez the amount of EUR 507,551'85 +5% of interest per annum from 15 October 2015".*

11. Harel Holdings failed to pay the Appellant the abovementioned amount.

C. Harel Holdings' Insolvency Proceedings

12. Moreover, in December 2016, insolvency proceedings were opened over the estate of Harel Holdings. The District Court in Tel Aviv-Jaffa on 4 January 2017, decided – *inter alia* – as follows:

[1] Inserted for better understanding.

No one will contest the fact that the Company owes its creditors approximately NIS 100 million and its assets will not be sufficient to pay off the aforesaid debts, and at least the large bulk of them. In the absence of the alternative of an arrangement with creditors, what we have before us is an insolvent company whose fate must be liquidation.

The special circumstances by virtue of which the court will order a provisional liquidation of a company and as specified in Section 300B of the Companies Ordinance [New Version], 5743-1983 have been met in the present instance. In this regard there is a necessity for the appointment of officers who will continue to run and manage the Company and to arrange the sale of its assets in a manner that will minimize the damage that will be caused to creditors. In the absence of a provisional liquidation order and the appointment of the present holders of office, there is a genuine fear of damage to the Clubs, which are the prime asset of the companies, and in a manner that will cause totally irreversible damage.

Accordingly I uphold the Application for a provisional liquidation order and I appoint Adv. Shaul Kotler and Chen Bardichev C.P.A. as provisional liquidators of the above-captioned Companies.

...

As already mentioned, two offers were submitted to the Trustees for the acquisition of the Clubs' activities, one being of the Nissanov Group and the other of the Amrani Group. The Trustees recommended to the court to approve in principle a sale of the Companies' activities in the Clubs, because otherwise irreparable damage would be caused, by virtue of the fact that the Companies will not be able to continue to run their businesses and the Clubs are liable to severe sanctions as prescribed, *inter alia*, in the constitution of the Football Association. In the scope of these sanctions: a deduction of points, relegation to lower leagues and so forth. The position taken by the Trustees has not been rebutted and it is also supported by the Official Receiver and as stated by counsel for the Official Receiver in the things he said at the hearing.

...

I accept the Trustees' recommendation as to the preferability of the Nissanov Group's offer over that of the Amrani Group, with this being on the strength of a number of advantages in the first offer over the second offer, and I will particularize on this:

The Nissanov Group deposited a sum of NIS 1 million as security for performance of its obligations, whereas the Amrani Group did not deposit any amount to secure the implementation of its offer.

The Amrani Group requested an extension of time to study and examine the obligations it is due to assume and as stated in Paragraph 3e of the offer, according to which, and in the course of it reserving the right to withdraw the offer within 15 days from the date written notice is given to the Trustees after the examinations that it will carry out. As opposed to that, the Nissanov Group's offer does not allow the bidder to withdraw its offer.

The Nissanov Group has, as stated, taken upon itself the handling and the responsibility with regard to the judgments and the claims abroad, whereas in the Amrani Group's offer responsibility for the debts and the demands in respect of claims abroad will fall on the coffers of the liquidation, and as stated in Paragraph 3g of the Nissanov Group's offer. This aspect is of a very material nature because it reflects the assuming of a possible obligation running into tens of millions of shekels.

The Nissanov Group will operate the Clubs immediately, as distinct from the Amrani Group, in the case of which operation by it is not immediate.

All the aforesaid considerations tip the scales towards accepting the bid by the Nissanov Group instead of the bid of the Amrani Group.

13. The Nissanov Group referred to in the above decision operates via the legal entity Poalei Tel Aviv Holdings Ld. The latter acquired – with the consent of the Court – certain rights and assets of Harel Holdings and continued to operate the football club (previously owned by Harel Holdings).

14. The Appellant filed his claim arising from the CAS Award with the liquidators of Harel Holdings. The latter approved the debt of the Appellant and included the debt in the List of Creditors and claims of Debt.

15. The insolvency proceedings are still pending. As of this moment in time no proceeds have been paid to the Appellant out of the insolvent estate.

D. Appellant's letter to the First Respondent

16. On 24 January 2020, the Appellant sent an email to the First Respondent that reads *inter alia* as follows:

> *"Dear Sir,*
>
> *Reference is herein made to the award rendered by the Court of Arbitration for Sport in the above-captioned proceedings opposing the Coaches to your most esteemed Club.*
>
> *You are herein requested to comply with it within the following 10 days or our clients will have no alternative but to seek redress before the competent judicial bodies.*
>
> *Payment shall be made over the following bank coordinates in accordance with the relevant Power of Attorney herein attached. …".*

E. The Proceedings before FIFA

17. On 17 September 2020, the Appellant filed a claim against the First Respondent before the FIFA Players' Status Committee ("PSC"). Therein, the Appellant requested the PSC to determine as follows:

> *"1. To accept this claim;*
>
> *2. To determine the Respondent (managed by the "Nissanov Group") being:*
>
> *2.1. the sporting successor of the original debtor Hapoel Tel-Aviv FC (managed by "Harel Holdings");*
>
> *2.2. liable for the debts incurred by the original debtor Hapoel Tel-Aviv FC (managed by "Harel Holdings") towards the Coach, particularly but not exclusively for the amounts awarded to him in the CAS award.*
>
> *3. To order the Respondent to assume the entirety of the FIFA PSC administration and procedural fees, if any".*

18. On 16 October 2020, the Appellant sent the following email to the FIFA Disciplinary Committee ("DC"):

> *"Good morning,*
>
> *Following our recent conversation, please find attached the email, dated 24th of January 2020, submitted on behalf of the creditors Cesar Domingo Mendiondo Lopez & Javier Gonzalez Lopez to the debtor club Hapoel Tel Aviv FC (with the corresponding annexes), including the relevant banking information.*
>
> *Thank you very much for your most valuable assistance".*

19. The letter referred to in the email (24 January 2020) is the Appellant's notice mentioned supra at no. 16.

20. On 21 October 2020, FIFA opened disciplinary proceedings against the First Respondent for the potential breach of Article 15 of the FIFA Disciplinary Code ("FDC") (failure to respect decisions).

21. On 26 October 2020, FIFA informed the First Respondent and the Appellant that the DC was not able to intervene in the matter at stake. The letter reads in its pertinent parts as follows:

> *"In this sense, we take due note that the club Hapoel Tel Aviv FC has informed us that 'the judicial decision respective to the disciplinary cases in reference, is a CAS Award rendered in the context of ordinary proceedings which were opened in 2015. The award was issued by the CAS in June 2016'.*
>
> *In this respect, we would like to refer the parties to art. 72 par. 2 of the FIFA Disciplinary Code (2019 edition) which establishes that "Disciplinary measures for failure to respect a final CAS decision rendered in the context of ordinary proceedings shall be imposed provided that the respective CAS procedure has started after the entry into force of this Code". Please note that the 2019 edition of the FIFA Disciplinary Code entered into force on 15 July 2019.*
>
> *In this sense, we take due note that the CAS proceedings had already started in October 2015, therefore, prior to the entry into force of the 2019 edition of the FIFA Disciplinary Code.*
>
> *We therefore inform the parties that the FIFA Disciplinary Committee is not in a position to intervene in the matter at stake.*
>
> *In light of the foregoing, we inform the parties that the disciplinary proceedings against the club Hapoel Tel Aviv FC are now closed.*
>
> *Finally, we would like to point out that the foregoing is of a purely informative nature and, therefore, without prejudice to any decision whatsoever and based on the information provided".*

22. On the same date, i.e., on 26 October 2020, the Appellant sent a letter to the PSC advising the latter that he had not received any news in relation to his claim filed on 17 December 2020. Furthermore, the Appellant stated in his letter as follows:

"In accordance with the legal provisions referred above, the Coach herein requests the FIFA Players' Status Committee:

1. to send the Parties the written confirmation about the receipt of the Statement of Claim;

2. to send the Statement of Claim to the Respondent with a time limit for a statement or reply".

23. On 27 November 2020, the Appellant sent a further reminder and again referred to his correspondence dated 17 September and 26 October 2020, requesting the PSC: (i) to send the parties a written confirmation that the statement of claim had been duly received, and (ii) to send the claim to the First Respondent, while providing the latter with a time limit to reply pursuant to the provisions of Articles 6.3 and 9.3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.

24. On 12 January and 22 March 2021, the Appellant again insisted on the initiation of proceedings.

25. On 7 April 2021, FIFA replied to the Appellant as follows ("Appealed Decision"):

"In this context, we have noted that according to clause 7 of the employment contract concluded between you and Hapoel Tel Aviv FC "any question derived from the application of this agreement will be solved by Arbitral Court of the Sport (TAS/CAS)".

In this regard and in accordance with the cited clause 7, you have filed a Request for Arbitration with the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, asking for a declaration that the club had terminated the contract without just cause. To this end, we make reference to the Award rendered in case no. CAS 2015/O/4261 Cesar Domingo Mendiondo Lopez & Javier Gonzalez Lopez v. Hapoel Tel Aviv Football Club dated 22 June 2016 and, in particular, to the fact that CAS declared itself competent and decided on the dispute.

Therefore, it is clear that the parties of the reference agreed that any dispute deriving from said employment contract should exclusively be decided by CAS and, as a result, the Players' Status Committee is not competent".

26. On 9 April 2021, the Appellant again sent a letter to the PSC requesting as follows:

"In light of the above, the closure of the proceedings with Ref. No. FPSD-178 could not be justified anyhow. Accordingly, the Coach herein respectfully requests the FIFA to continue adjudicating on the case at hand with Ref. No. FPSD-178 and to issue a formal decision by the competent body of the FIFA.

For procedural precaution, the Coach shall herein make the express reservation that any further silence from the FIFA DRC in relation to the present proceedings with Ref. No. FPSD-178 shall be considered a denial of justice, which occurs if the judicial body has failed to issue and communicate a decision following a party's request. As a result, the Coach shall be left no other resort but to consider the FIFA letter of 7th of April 2021 with Ref. No. FPSD-178 as a decision and appeal it before the Court of Arbitration for Sport in accordance with the provisions of the Article 58 par. 1 of the FIFA Statutes and the Article R47 of the Code of Sports-related Arbitration".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 28 April 2021, the Appellant filed a Statement of Appeal against the Appealed Decision with the CAS in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). In his Statement of Appeal, the Appellant requested that this procedure be referred to a sole arbitrator.

28. With letter dated 6 May 2021, the Second Respondent agreed to refer the matter to a sole arbitrator.

29. On 18 May 2021, the CAS Court Office advised the First Respondent as follows:

> *"… the First Respondent is invited to inform the CAS Court Office within seven (7) days from receipt of this letter by courier whether it agrees to the Appellant's request to submit this matter to a Sole Arbitrator. In the absence of an answer or in case of disagreement, in accordance with Article R50 of the Code, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue of the number of arbitrators, taking into account the circumstances of the case".*

30. On 25 May 2021, the First Respondent advised the CAS Court Office as follows:

> *"The First Respondent, Hapoel Tel Aviv FC (hereinafter also: 'the Club'), has discovered the existence of the Appeal in reference, only once your letter of May 18 2021 arrived to the Club's headquarters by courier. It should be noted that the email addresses provided by the Appellant are not in use for over than 4 years now. Therefore, the Club was totally unaware of all previous correspondence concerning the case in reference and also the correspondence between the Appellant and FIFA, which led to this Appeal being filed. …*
>
> *the Club's kindly asks the CAS Court Office to send all the exhibits of the Statement of Appeal (including the Appellant's claim filed to FIFA) to the undersigned's emails2. Only after we shall receive all relevant documents, then the First Respondent can be in a position to assess and decide whether it agrees to the Appellant's request to submit this matter to a Sole Arbitrator, within 7 days of receipt of the documents. …".*

31. By letter dated 26 May 2021, the CAS Court Office

- Informed the First Respondent that the full case file has been forwarded to its Counsel on 25 May 2021;

- Set a new deadline for the First Respondent to comment on the Appellant's request to forward the case to a sole arbitrator;

32. On 30 May 2021, the First Respondent advised the CAS Court Office that it agreed with the appointment of a sole arbitrator.

33. On 16 August 2021, the CAS Court Office, on behalf of the Deputy President of the Appeals Arbitration Division, advised the Parties of the appointment of the Sole Arbitrator as follows ("Sole Arbitrator"):

Sole Arbitrator: Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland

34. On 25 October 2021, within the extension previously granted by the Sole Arbitrator, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.

35. On 5 April 2022, within the extension previously granted by the Sole Arbitrator, the First Respondent filed its Answer in accordance with Article R55 of the Code.

36. On 26 April 2022, within the extension previously granted by the Sole Arbitrator, the Second Respondent filed its Answer in accordance with Article R55 of the Code.

37. On 30 May 2022, after having consulted the Parties, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter.

38. Following several exchanges of email with the Parties, the CAS Court Office advised the Parties that an in-person hearing will be held in Lausanne on 26 July 2022 and that both matters (CAS 2021/A/7914 and CAS 2021/A/7915) will be heard together.

39. On the same date, the CAS Court Office issued the Order of Procedure ("OoP"), which was duly signed by the Parties.

40. On 26 July 2022, a hearing was held in the matters CAS 2021/A/7914 and CAS 2021/A/7915. The following persons – besides Mr Björn Hessert (CAS Counsel) – attended the hearing:

For the Panel

- Mr Ulrich Haas, Sole Arbitrator
- Ms Domitille Mangold (assistant of the Sole Arbitrator)

For the Appellant

- Mr César Domingo Mendiondo López
- Mr Juan de Dios Crespo Pérez (counsel)
- Mr Alfonso Léon Lleó (counsel)
- Mr Gytis Račkauskas (counsel)
- Mr Amnon Dardik (counsel)

For the First Respondent

- Mr Joseph Gayer (counsel)
- Mr Omri Applebaum (Counsel)

For the Second Respondent

- Mr Carlos Schneider Salvadores (Director Judicial Bodies)
- Ms Cristina Pérez González (Senior Legal Counsel)

IV. PARTIES' POSITIONS AND RESPECTIVE PRAYERS OF RELIEF

41. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

42. At the outset of the hearing all parties agreed for Ms. Domitille Mangold to assist the hearing.

A. The Position of the Appellant

43. In its Appeal Brief, the Appellant sought the following relief:

> *"1. to accept this appeal against the decision of the Fédération Internationale de Football Association with the Ref. Nr. FPSD-178, passed in Zurich and notified to the Parties on the 7th of April 2021;*
>
> *2. to annul the Decision challenged, pursuant to the provisions of Article 57 of CAS Code, and issue a new decision, replacing the Decision, in the following terms:*
>
> *(i) to determine Hapoel Tel-Aviv Football Club (managed by the "Nissanov Group") being:*
>
> *- the sporting successor of the original debtor Hapoel Tel-Aviv FC (managed by "Harel Holdings"); and*
>
> *- liable for the payment of the debts incurred by the original debtor Hapoel Tel-Aviv FC (managed by "Harel Holdings") towards the Coach, particularly for the amounts awarded to him in the CAS award of 22 June 2016 in arbitration proceedings with a reference No. CAS 2015/O/4261;*
>
> *Alternatively, only in case the requests above were not granted:*
>
> *(ii) to refer the case back to the FIFA Player Status Committee;*
>
> *In any case:*
>
> *(iii) to fix a sum to be paid by the Respondents, in order to contribute to the payment of the Appellants' legal fees and costs;*
>
> *(iv) to condemn the Respondents to the payment of the whole CAS administration costs and arbitrators' fees - if any; and*
>
> *(v) to determine any other relief the Sole Arbitrator may deem appropriate".*

44. The submissions of the Appellant, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

a. CAS Jurisdiction

45. The Appellant submits that CAS is competent to hear this case.

- The jurisdiction follows from Article R47 of the Code and Article 58(1) of the FIFA Statutes. Furthermore, FIFA's letter dated 7 April 2021 (Appealed decision) is a final decision that contains a ruling and is subject to an appeal before the CAS. In addition, the FIFA rules and regulations do not provide for further internal remedies.

- Furthermore, the Appellant submits that FIFA's behavior constitutes a denial of justice, since FIFA refused to adjudicate his claim on the merits.

- In support of his submissions, the Appellant refers to CAS jurisprudence, in particular CAS 2011/A/2343 and CAS 2015/A/4195.

b. The FIFA is competent to adjudicate the requests

46. It is true that the Employment Contract concluded between the Coach and Harel Holdings *"contained a jurisdictional clause in favor of the CAS"*. However, such clause does not prevent FIFA from adjudicating on the issue of sporting succession. To this end, the Appellant submits that

- the current dispute does not derive from the Employment Contract, since the latter *"does not govern the issues deriving out of the sporting succession"*.

- The dispute deriving from the Employment Contract has been already finally decided by the CAS in the CAS Award (CAS 2015/O/4261). Therein, Harel Holdings was condemned to pay compensation to the Appellant for the termination of the Employment Contract without just cause.

- The case at hand differs entirely from the proceedings in CAS 2015/O/4261 since the latter involves a legal entity different from the First Respondent.

  (i) In CAS 2015/O/4261, the sole arbitrator adjudicated a dispute deriving from the Employment Contract between the Appellant and his former employer (Harel Holdings).

  (ii) In the present proceedings, however, the dispute is between the Appellant and the First Respondent. The claim in question here derives from sporting succession.

- According to the Appellant the two disputes completely differ in scope:

  (i) CAS 2015/O/4261 dealt with a breach of the Employment Contract with all the subsequent consequences.

  (ii) the current proceeding, on the contrary, deals with the issue of sporting succession.

- It follows from the above that the First Respondent and Harel Holdings are two different

entities with their own legal personality. The First Respondent was not a signatory of the Employment Contract and, therefore, is not bound by the jurisdiction clause contained therein.

- Furthermore, the Appellant was obliged to seek recourse with the PSC, since he had to exhaust all legal remedies. The Appellant insofar refers to CAS jurisprudence, more particularly CAS 2017/A/5460 and CAS 2017/A/5054. Thus, according to the Appellant the PSC was competent to adjudicate the matter based on Article 22 lit. c of the Rules on the Status and Transfer of Players ("RSTP").

c. As to the Applicable Law

47. The Appellant submits that the matter must be decided based on FIFA's rules and regulations and, additionally, Swiss law pursuant to Article 57(2) of the FIFA Statutes.

d. The First Respondent is the Sporting Successor of Harel Holdings

48. The Appellant submits that the First Respondent is the sporting successor of Harel Holdings. This follows from

- the well-established jurisprudence of the CAS. In this respect the Appellant refers to CAS 2013/A/3425, CAS 2007/A/1355, CAS 2011/A/2614, CAS 2011/A/2646 and CAS 2012/A/2778.

- The above decisions base sporting succession on elements such as name colors, logo, fans, history, players, stadium, etc. regardless of the legal entity operating the club. In the case at hand *"particular attention shall be brought to the fact that …* [First Respondent] *even kept the affiliation to the Israel FA and continued participating within the same competitions organized by the latter, thus actively expressing its undeniable coherence with the original debtor"*.

- Based on the above there is no alternative but to conclude that the First Respondent is the sporting successor of Harel Holdings. A "formal corporate change of the managing company of a football club could not anyhow prevent the judging authority from establishing the case of sporting succession, if all the other conditions are satisfied. The current dispute does not derive from the Employment Contract, since the latter *"does not govern the issues deriving out of the sporting succession"*.

e. The First Respondent is liable for the debts of Harel Holdings

49. The Appellant submits that the First Respondent is liable for the debts of Harel Holdings. This is also true in case the original debtor has gone through insolvency proceedings.

- Putting *"an insolvent club under the new management company should not create any advantage for such a club in comparison with other clubs that also have overdue payables but that remained managed by the same company and attempted to comply with their obligations towards creditors"*.

- If insolvent clubs *"were entitled to discharge their obligations towards players and coaches for unlimited time simply by opening the insolvency proceedings … it would create unequal treatment that would potentially induce the other clubs to initiate insolvency procedures and continue its activities under the management of a different legal entity with a clean balance sheet"*.

- The attempt of the First Respondent to avoid complying with its duties as a sporting successor is a clear sign of bad faith conduct. This shall not be tolerated. Deciding differently would privilege the First Respondent *"in comparison to the other clubs which are affiliated to Israel IFFA … but not undergoing insolvency proceedings"*. This can only be cured by making the First Respondent liable for Harel Holdings' debts.

f. The Appellant's duty to act diligently

50. The Appellant is aware of the CAS jurisprudence according to which a creditor must act diligently and pursue his claims in national insolvency proceedings against his original debtor. The Appellant submits that he acted diligently, since he filed his claim in the insolvency proceedings. However, during a period of 5 years he has not received any proceeds from the insolvency proceedings that are still ongoing. Consequently, the Appellant is of the view that he is not left with any other choice than to pursue his claim in front of the PSC against the First Respondent.

g. The effects of the Insolvency Proceedings

51. The Appellant submits that any effects of the insolvency proceedings should not be accepted easily in proceedings before the CAS.

- FIFA has a margin of discretion when recognizing the effects of national insolvency proceedings.

- When exercising such discretion, FIFA shall perform a balance-of-interest test on a case-by-case basis.

- In the case at hand the balance-of-interest test clearly tips in favor of the Appellant, i.e., not recognizing the effects of the insolvency proceedings as *"it would otherwise significantly jeopardize the right of the Coach to receive the compensation for the termination of his employment contract without just cause … despite the latter having acted fully diligently"*.

- Furthermore, it should be noted that the estate of Harel Holdings had accumulated massive debts, has little assets to satisfy its creditors and that insolvency proceedings could continue for an indefinite amount of time without any guarantee for the Appellant to recover a single part of his claim.

- The protection of players' and coaches' salaries is of great importance to FIFA and deserves special protection. The First Respondent, on the contrary, has no interest worth of protection.

- FIFA has already decided in comparable cases that the First Respondent is to be considered the sporting successor of Harel Holdings. It is in the interest of football that similar disputes be decided in a uniform manner. Thus, the Appellant shall not be discriminated in this case. Instead, FIFA *"must ensure the equal treatment of all similarly situated creditors of …* [Harel Holdings]*"*. It would be unfair to discriminate the Appellant vis-à-vis other members of the "football family" despite the fact that all cases involving Harel Holdings and the First Respondent are similar.

B. The Position of the First Respondent

52. In his Answer, the First Respondent sought the following relief:

- *"Reject and dismiss the Appeal out of hand and/or to its merits and in its entirety, including any requests for relief as set out in the Appeal Brief and the Statement of Appeal.*
- *Confirm FIFA's Decision of 7 April 2021*
- *Declare res judicata on the dispute between the parties, preventing the Appellant to take any further proceedings in the matter before FIFA and/or CAS*
- *On the subsidiary basis, in the event the Sole Arbitrator shall decide that the FIFA decision should be changed in any way, the Sole Arbitrator is requested to:*
- *Stay the Appellant's claim due to lis pendens until the liquidation proceeding of Harel Holdings shall end, or at least until a final and binding award shall be issued by the CAS Panel in the First Respondent's nine appeals.*
- *Alternatively to the alternative, to return the case to FIFA PSC so the First Respondent can exhaust its right to raise all its arguments referring to the possibility to determine that the "new Hapoel" (and not the Liquidators of Harel Holdings) is responsible to defray the Appellant's debt.*
- *Allow the First Respondent to file a request to CAS and/or FIFA referring to the staying of the Appellant's claim.*
- *In any event, the Sole Arbitrator is requested to decide that all legal costs and other expenses incurred in connection to the present proceedings shall be borne by the Appellant and paid to the First Respondent".*

a. As to the applicable law

53. The First Respondent submits that the dispute shall be decided in accordance with FIFA regulations and Swiss Law.

b. The statute of limitations has expired

54. The First Respondent is of the view that the Appellant's claim is time-barred. The First Respondent relies

- on the Art. 25 para 5 of the RSTP. The provision reads as follows:

  "The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case".

- the event giving rise to the dispute within the above meaning is either the termination of the Employment Contract on 3 September 2015 or the decision of the District Court in Tel Aviv-Jaffa dated 4 January 2017, according to which the rights to manage the club's affairs was transferred to the Nissanov Group.

- In any event the deadline of two years has elapsed since the Appellant filed his statement of claim against the First Respondent with the PSC on 17 September 2020.

- Furthermore, according to the First Respondent there is no justification for the Appellant's "heavy delay". The Appellant was aware of all the relevant circumstances and decided to stay inactive over years. The First Respondent submits that the Appellant was aware of

  - the insolvency proceedings against Harel Holdings and

  - that the rights to manage the club were transferred to the Nissanov Group (operating via Poalei Tel Aviv Holdings Ld.).

  - The Appellant's Israeli attorney participated in the hearings before the District Court in Tel Aviv-Jaffa in December 2016 and January 2017. Furthermore, the Appellant filed his claim in the liquidation proceedings over Harel Holdings' estate.

c. FIFA does not have jurisdiction over the dispute

55. The First Respondent submits that FIFA is competent for employment-related disputes only (Article 22 lit. c RSTP). The provision reads as follows:

    "FIFA is competent to hear:

    (c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level".

56. The First Respondent is of the view that the submissions of the Appellant are contradictory.

- If – as submitted by the Appellant – the claim filed with the PSC is not an employment-related dispute, then FIFA is not competent to adjudicate the matter. The latter, thus, falls outside of the scope of FIFA's jurisdiction.

- If on the contrary, the Appellant's claim is employment-related, then Article 7 of the Employment Contract comes into play, which provides for the exclusive jurisdiction of

CAS (in ordinary proceedings) and not the FIFA adjudicatory bodies.

- Furthermore, the Appellant was *"not obliged to seek recourse before the … PSC"*. This follows from the simple fact that the Appellant first approached the DC (on 16 December 2020), which rejected his request rightfully. Also, the CAS jurisprudence cited by the Appellant does not support his case, since none of the CAS decision cited involve, awards issued in CAS ordinary proceedings.

d. The Principle of Res judicata

57. The First Respondent submits that the CAS is barred from looking at the merits of the case because of the principle of *res judicata*.

- The principle of *res judicata* is a fundamental principle of Swiss procedural public policy. A violation of said principle entails the nullity of the arbitral award.

- The proceedings CAS 2015/O/4261 and the procedure at hand deal with the same subject matter. They involve the same object, the same legal grounds, and the same parties ("triple identity" test). Accordingly, the Sole Arbitrator is prevented from adopting another decision in the same matter.

- Contrary to what the Appellant submits, the parties in CAS 2015/O/4261 and in these proceedings are the same (the Appellant and Hapoel Tel Aviv). Furthermore, the *"identity of the matter in dispute is examined from a substantive point of view and not grammatically"*. According to the First Respondent the Appellant's attempts to present his "new" claim as different from the claim already filed and decided in CAS 2015/O/4261 must be rejected. It is completely irrelevant how the claim is formulated, if the parties are the same (the Coach and the Hapoel Tel Aviv FC), and the matter in dispute is the same. There is – according to the First Respondent – *"no doubt that the matter in dispute is the money owed to the Appellant in respect of the termination of his employment contract in the Club"*.

- It follows from all the above that the final award rendered by the CAS in the matter CAS 2015/O/4261 cannot be relitigated. The differences claimed by the Appellant between the "new" and the "old" claim are artificial and cannot justify bringing any further claims against the First Respondent.

- Finally, the First Respondent submits that the Sole Arbitrator is also bound by the DC's decision dated 26 October 2020, which determined FIFA's lack of jurisdiction to enforce the claim awarded in CAS 2015/O/426. The First Respondent further notes that this decision has not been appealed by the Appellant.

e. Lis pendens and risk of contradicting findings and decisions

58. The First Respondent further submits, that the Appellant's claim must also be dismissed based on the principle of *lis pendens,* because

- the insolvency proceedings are yet to be completed. While the competent Israeli Court is supervising and monitoring these proceedings any similar or parallel proceeding brought before FIFA or CAS must be stayed.

- Harel Holding's insolvency proceedings have not ended and are still taking place before the Tel Aviv District Court. Any decision issued by FIFA or by the CAS regarding the execution or enforcement of the Harel Holding's debts contradicts the *lis pendens* principle, *"which favors the competent Israeli Court – the Tel Aviv District Court"*.

- Article 9 of the Swiss Private International Law Act ("PILA"), which embodies the *lis pendens* rule, provides as follows:

  "If an action having the same subject matter is already pending between the same parties abroad, the Swiss court shall stay the case if it is to be expected that the foreign court will, within a reasonable time, render a decision capable of being recognized in Switzerland".

- Article 186(1) PILA (and the well-established CAS jurisprudence [CAS 2009/A/1881]) requires to stay the arbitral proceedings if three conditions are cumulatively met: (i) the arbitration and the civil lawsuit must be between the same parties and must concern the same matter; (ii) The lawsuit before the State court must be "already pending" when the arbitration claim is lodged with the CAS; and (iii) the party raising the exception of *lis pendens* must prove the existence of "serious reasons" requiring the stay of the arbitral proceedings.

59. The First Respondent further notes that it has filed nine appeals against decisions of the FIFA adjudicatory bodies between January and April 2020. These nine appeals have been consolidated into a single case before CAS. The appeals raise many legal questions with respect to "Hapoel Tel Aviv FC's" debts towards foreign creditors (players and clubs), which date back to a time before 4 January 2017. The CAS hearing in these nine appeals was in March 2021 and still, no award has been issued. Some of these questions raised in these proceedings are clearly like the ones in these proceedings.

60. The First Respondent objects to the Appellant's submissions according to which it has been established in other cases that it is the sporting successor of Harel Holdings. The First Respondent notes that all the FIFA decisions cited by the Appellant are under appeal to the CAS and the proceedings are still pending. Furthermore, in all cases the debt of Harel Holdings has either been adjudicated by the FIFA judicial organs or by the CAS in appeals arbitration proceedings. In no instance the debt was determined in CAS ordinary proceedings.

61. The First Respondent objects to the Appellant's allegations that the insolvency proceedings in Israel constitute an unacceptable burden. The *"legitimacy of the insolvency proceedings is supervised by a competent national court in Israel"* that oversees the efforts of the Liquidators. The liquidation proceedings of Harel Holdings are conducted in accordance with the relevant insolvency law and the payment of any monies to the creditors is subject to the basic principle of equal treatment of all creditors.

C. The Position of the Second Respondent

62. FIFA has filed the following requests in its Answer dated 26 April 2022:

> *"(a) rejecting the reliefs sought by the Appellant;*
>
> *(b) confirming the Appealed Decision; and*
>
> *(c) ordering the Appellant to bear the full costs of these arbitration proceedings".*

a. CAS Jurisdiction, Admissibility and Applicable Law

63. The Second Respondent does neither contest CAS jurisdiction nor the admissibility of the Appellant's appeal.

64. As to the applicable law to the merits, the Second Respondent submits that the Sole Arbitrator shall apply the FIFA regulations and, additionally Swiss law should the need arise to fill a possible gap in the FIFA regulations.

65. The Second Respondent agrees that its letter dated 7 April 2021 is a decision within the meaning of Article R47 of the Code, since it (i) contains a genuine ruling, and (ii) directly affects the legal situation of the Appellant.

66. The Second Respondent contests that its conduct constitutes a denial of justice. The concept of denial of justice is well established in CAS case law. It concerns a refusal to issue a decision within reasonable time. In the case at hand, however, the PSC issued the Appealed Decision. Thus, there cannot be a denial of justice in the case at hand.

b. The principle of res judicata

67. The Second Respondent submits that this case has been decided by the DC on 26 October 2020. Therein, the DC declined to enforce the CAS award CAS 2015/O/4261 against the First Respondent. This decision has not been appealed by the Appellant. Instead, the Appellant tries to relitigate the matter (enforcement of the CAS Award against the First Respondent) before the PSC.

- The principle of *res judicata* prevents a judgment or decision involving the same parties and the same object from being discussed repeatedly by a court or tribunal, thus avoiding the potential occurrence of two contradicting decision, which would be contrary to public policy.

- To establish whether two proceedings involve the same subject matter the so-called "triple identity test" must be applied. There is identity (and consequently *res judicata*) if (i) the claims are identical (from a substantive point of view); (ii) the same parties were involved in the proceedings; and (iii) the matter was solved based on the same facts existing at the time of the first judgment.

- The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether they were known to the parties, stated by them, or considered as proof by the first court (ATF 139 III 126 at 3.1, p. 129).

68. The Second Respondent submits that the triple identity check in this case is met, since

- the claim in these proceedings is identical (from a substantive point of view) to the one already decided;

- the same parties were involved in that outcome; and

- the matter was solved based on the same facts existing at the time of the first judgment.

69. On 26 October 2020, following a request by the Appellant to inform Harel Holdings and the First Respondent of the existence of the disciplinary proceedings, FIFA advised the First Respondent and the Appellant that the DC was not able to intervene in the enforcement proceedings because of Article 72(2) FDC.

70. Subsequently to this decision, which was not appealed by the Appellant, the latter filed an identical claim with the PSC *"with the sole purpose of obtaining the result that suits his purposes"*. However, the Appellant is prevented from doing so considering the final and binding DC decision dated 26 October 2020.

71. The Second Respondent finds the Appellant´s attitude concerning, as it appears that, once the disciplinary path was closed, he tried to use another one without mentioning (even before CAS) that FIFA had already decided the matter.

c. The PSC has no jurisdiction

72. The FIFA regulations provide for two avenues to proceed against a sporting successor:

- One route is enshrined in Article 15(4) FDC. The provision enables a creditor that is in possession of a final and binding decision (either by FIFA or the CAS) to enforce such decision against a third party, i.e., sporting successor of the original debtor. The provision provides as follows:

  > *"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

  The competent body to decide upon the enforcement of an existing decision against a sporting successor of the debtor is regulated only in the FDC (not in the RSTP) and falls under the exclusive competence of the DC.

- The other route is provided for in Article 24ter RSTP. The provision states as follows:

"The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".

This route requires that a claim (arising from a contractual relationship) is lodged against the sporting successor. In such case the PSC is competent to decide the case in accordance with Article 22 RSTP.

73. The Second Respondent submits that the Appellant mixes and matches the different routes.

- Insofar as the Appellant request a declaratory ruling that the First Respondent is the sporting successor of Harel Holdings and liable for the amounts adjudicated in CAS 2015/O/4261, he seeks – in essence – the application of Article 15(4) FDC.

- However, the only FIFA organ competent to adjudicate such matters is the DC. The RSTP, on the contrary, do not deal with the enforcement of existing decisions against debtors or sporting successors. Consequently, the RSTP do not foresee that the PSC is competent to decide on such requests.

- The assessment whether a club (or its sporting successor) complied with a CAS award is only possible within the context of disciplinary proceedings, and not before the PSC. These matters are disciplinary in nature. The Appellant had tried already the disciplinary path, had failed, and did not appeal such decision.

- The Second Respondent explains that – in principle – Article 15 FDC nowadays also applies to CAS awards issued in ordinary proceedings. This follows from the wording of the provision that reads as follows:

  "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 TITLE II. OFFENCES 15 decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS" (emphasis added by the Second Respondent).

- However, the transitional rules in the FDC provide that awards issued in CAS ordinary proceedings only benefit from the enforcement mechanism in Article 15 FDC, if the CAS proceedings have been initiated as of 15 June 2019. Article 72(2) FDC provides as follows:

  "Disciplinary measures for failure to respect a final CAS decision rendered in the context of ordinary proceedings shall be imposed provided that the respective CAS procedure has started after the entry into force of this Code".

- The above requirement is not met. Consequently, the DC was right – when issuing the letter of 26 October 2020 – to dismiss the Appellant's request.

74. It is true that in the context of Article 22 RSTP in conjunction with Article 24ter(1) RSTP also

the PSC can address the question of sporting succession (see supra). However, for the PSC to be competent two prerequisite need to be fulfilled*:*

- The Appellant must file an employment-related claim against the sporting successor. This is not what the Appellant seeks in the case at hand. Instead, the Appellant – by way of declaratory relief – attempts to enforce an existing CAS decision and not to obtain a performance judgment against the First Respondent.

- Furthermore, the effect of Article 24ter RSTP is that in employment-related disputes the sporting successor replaces the debtor. For this to take place, however,

    - The Appellant must pursue an employment-related claim, i.e., he must seek a claim arising from the Employment Contract. The *"existence of a contractual dispute or at least a claim based on a contractual issue should act as the genesis of every procedure before the PSC"*. This is not the case here since the Appellant wishes to enforce the CAS Award. Also, the Appellant himself admitted that the relief sought by him is not contractual in nature, since in the Appeal Brief, he stated as follows:

"In this context it is primarily noteworthy that the current dispute should not be considered having derived from the Employment Contract, as the latter does not govern the issues deriving out of the sporting succession, raised by the Coach in his Statement of claim filed before the FIFA PSC". (Appeal Brief, para. 45.)

"In fact, the dispute deriving from the Employment Contract (the dispute in relation to the premature termination of the Employment Contract) has been already adjudicated by the CAS in the CAS Award of 22 June 2016 in Arbitration CAS 2015/O/4261, condemning the predecessor of the First Respondent to pay the compensation for the termination of the Employment Contract without just cause". (Appeal Brief, para. 46.)

    - In addition, even if one were to qualify the Appellant's request as employment-related (within the meaning of Article 22 lit. c RSTP), the PSC would only have jurisdiction, if it was competent to decide the employment-related dispute vis-à-vis the original debtor in the first place. Article 24ter RSTP only extends the competence of the PSC to the sporting successor of the original debtor. In the case at hand, however, the PSC is not competent vis-à-vis the debtor, since the parties to the Employment Contract have provided for an exclusive jurisdiction clause in favor of CAS (substituting for the FIFA adjudicatory organs) and thereby opted out of Article 22 lit. c RSTP.

75. In summary, the Second Respondent submits that either the alleged successor is indeed the sporting successor of Harel Holdings and replaces the latter in a contractual dispute or not:

- If the above is answered in the affirmative, the alleged sporting successor replaces Harel Holdings and the competence clause in Article 7 of the Employment Contract applies. The latter has the effect that the PSC is not competent to hear the case.

- If the above question is, however, answered in the negative and there is no employment-related dispute, Article 22 lit. c RSTP is not applicable and – consequently – the PSC has no jurisdiction.

76. The Second Respondent also argues that the Appellant's reference to CAS jurisprudence (CAS 2017/A/5460 and CAS 2017/A/5054) is misleading, because both decisions dealt with completely different sets of circumstances. Thus, both CAS awards are irrelevant for the matter at hand. None of the decisions analysed the main question, i.e., that the two different avenues (enforcement through disciplinary proceedings) and obtaining a performance judgment against the sporting successor of the debtor are mutually exclusive and cannot be mixed and matched.

V. JURISDICTION

A. The Arbitration Agreement

77. Article R47 of the Code provides as follows:

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

78. Article 58(1) of the FIFA Statutes that provides as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*

79. In view of the above, the Sole Arbitrator finds that there is a valid arbitration clause between the Parties. The latter is also confirmed by the OoP duly signed by all the Parties.

B. Res Judicata

a. The position of the Parties

80. The First and Second Respondent have both raised a plea of *res judicata*. The plea of *res judicata* has both positive and negative effects. According to the positive effect the parties to the decision that has *res judicata* effect can rely on the findings of said decision in subsequent proceedings. The negative effect of *res judicata* consists of preventing a new forum to reconsider an issue already previously decided (GIRSBERGER/VOSER, International Arbitration, 4th edition 2021, no. 1250). In the case at hand the Respondents invoke the negative effect of *res judicata*. According to the First Respondent the claim at stake has already been finally disposed of in the CAS Award and, therefore, cannot be relitigated. Furthermore, both Respondents submit that the matter at stake cannot be adjudicated by the Sole Arbitrator because it has been decided by the DC on 26 October 2020 (cf. no. 26). The latter decision has become final and binding since

the Appellant did not appeal it to the CAS.

b. The findings of the Sole Arbitrator

81. It is disputed in the legal literature whether the negative effect of *res judicata* deprives an arbitral tribunal of its jurisdiction or whether it is *"a negative condition of admissibility"* (GIRSBERGER/VOSER, International Arbitration, 4th edition 2021, no. 1251). The question can be left unanswered here since no issues of *res judicata* arise in the case at hand.

82. The question of *res judicata* is, in principle, a procedural question that is governed by the *lex fori*, i.e., Swiss law. Under Swiss law, the negative effect of *res judicata* can be invoked if the claim at issue is identical to the one that has already been adjudicated with final effect (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed. 2021, no. 1648a). There is identity within the above meaning in case there is both identity of the parties and of the subject matter (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed. 2021, no. 1648a). According to the jurisprudence of the Swiss Federal Tribunal ("SFT") the *"subject matter of the dispute is determined by the individualized claims and by the facts invoked in support of it"* (SFT 136 III 123, consid. 4.3.1).

83. The subject matter underlying the CAS Award is – in application of the above criteria – not identical with the matter in dispute before the Sole Arbitrator, because the parties involved in both proceedings are/were different. While the proceeding underlying the CAS Award was directed against Harel Holdings, the present matter is directed – *inter alia* – against Poalei Tel Aviv Holdings Ltd (cf. supra no. 2). Both entities may have the same trading name, but are from a legal standpoint different entities and, therefore, different parties. Furthermore, the Sole Arbitrator notes that FIFA was not a party in the proceedings underlying the CAS Award.

84. Also, the decision of the DC dated 26 October 2020 has no bearing on the present proceedings. The effect of *res judicata* is conferred upon an adjudicatory decision by state law in the public interest. For this reason, only certain adjudicatory decisions enjoy *res judicata* effects, such as – e.g., court decisions or true arbitral awards. The *res judicata* effect is not submitted to party autonomy. Decisions by association tribunals are not among the ones that enjoy *res judicata* effects like court decisions (CAS 2012/A/2912, no. 105). Also the jurisprudence of the SFT points in this direction (4A_476/2020, consid. 3.2):

> *"Ob der Grundsatz der materiellen Rechtskraft als Teilgehalt des verfahrensrechtlichen Ordre public (Art. 190 Abs. 2 lit. e IPRG) auf Disziplinarverfahren vor Verbandsorganen überhaupt anwendbar ist, braucht bei diesem Ergebnis nicht vertieft zu werden (vgl. etwa auch Urteile 4A_462/2019 vom 29. Juli 2020 E. 5.1; 4A_324/2014 vom 16. Oktober 2014 E. 6.2.1; 4A_386/2010 vom 3. Januar 2011 E. 9.3.1 betr. Anwendbarkeit des aus dem Grundsatz der Rechtskraft folgenden Prinzip ne bis in idem im Disziplinarrecht des Sports). Immerhin ist zu bemerken, dass es sich bei verbandsinternen Entscheidungsorganen nicht um Schiedsgerichte handelt und deren Entscheidungen keine Rechtsprechungsakte darstellen (BGE 119 II 271, E. 3b S. 275 f.; Urteile 4A_490/2017 vom 2. Februar 2018 E. 3.3.4; 4A_492/2016 vom 7. Februar 2017 E. 3.3.3; 4A_222/2015 vom 28. Januar 2016 E. 3.2.3.1)".*

> **Free translation**: Whether the principle of substantive res judicata as part of the procedural public policy (Art. 190 para. 2 lit. e IPRG) is applicable at all to disciplinary proceedings before association bodies does not need to be examined in depth in light of this result (cf. also, for example, judgments 4A_462/2019 of 29 July 2020 E. 5.1; 4A_324/2014 of 16 October 2014 E. 6.2.1; 4A_386/2010 of 3 January 2011 E. 9.3.1 concerning the applicability of the principle of ne bis in idem in sports disciplinary law). It should be noted, however, that decision-making bodies within associations are not arbitral tribunals and their decisions do not constitute judicial acts (BGE 119 II 271, E. 3b p. 275 f.; judgments 4A_490/2017 of 2 February 2018 E. 3.3.4; 4A_492/2016 of 7 February 2017 E. 3.3.3; 4A_222/2015 of 28 January 2016 E. 3.2.3.1)

85. Even if one were to apply the concept of *res judicata* by analogy to decisions of an association tribunal, the competence of the Sole Arbitrator would not be affected. Under Swiss law, the *res judicata* effect of an award is limited to decisions on the merits by which the arbitral tribunal resolves the dispute before it in whole or in part (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed. 2021, no. 1642). The decision of the DC, however, did not adjudicate the merits of the case before it. Instead, the DC decision refused to adjudicate the matter because it qualified the Appellant's request (to initiate enforcement/disciplinary proceedings against the First Respondent) as inadmissible. The DC decision clearly stated that

> *"the FIFA Disciplinary Committee is not in a position to intervene in the matter at stake".*

86. Since, however, the DC did not take a decision on the merits, there is no room to apply the concept of *res judicata* even by analogy.

C. Interim Conclusion

87. In view of all the above, the CAS has jurisdiction to adjudicate the matter before it.

VI. ADMISSIBILITY

88. Article R49 of the Code provides as follows:

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

89. The Appealed Decision – even though issued in the simple form of a letter – constitutes a "decision" within the meaning of Articles R47 and R49 of the Code, since it contains a ruling. The Appealed Decision declines to adjudicate the Appellant's requests for lack of competence. Thus, the required threshold is met.

90. The Appealed Decision was notified to the Appellant on 7 April 2021. The Appellant filed his appeal with the CAS on 28 April 2021. Consequently, the deadline for appeal of 21 days

(contained in Article 58(1) of the FIFA Statutes) was observed. It follows from the above that this appeal is admissible.

91. On a side note, the Sole Arbitrator clarifies that this is not a case of denial of justice. A denial of justice only occurs where there is no decision of the competent body at all. This, however, is not the case here, since FIFA has issued a decision, i.e., the Appealed Decision in the case at hand.

VII. OTHER PROCEDURAL ISSUES

92. The First Respondent submits that the case at hand should be stayed or dismissed because of *lis pendens*, since

- The insolvency proceedings in Israel are still pending. The Appellant has filed his claims arising from the CAS Award in the insolvency proceedings over the estate of Harel Holdings. The claims have been accepted and included in the List of Creditors and Claims of Debts. However, no payments have been made from the insolvent estate so far.

- The First Respondent has filed nine appeals against decisions of the FIFA DC between January and April 2020. The appeals have been consolidated in a single proceeding before CAS and all deal with the question whether Poalei Tel Aviv Holdings Ltd is liable for debts incurred by Harel Holdings because of alleged sporting succession. Since some of the question raised in this procedure are like the questions raised in the consolidated proceedings, the present proceedings should be stayed to await the outcome of the consolidated procedures.

93. The Sole Arbitrator notes that Article 186(1bis) of the PILA states as follows:

> *"It shall decide on its jurisdiction without regard to any action having the same subject matter that is already pending between the same parties before a state court or another arbitral tribunal, unless there are substantial grounds for a stay in proceedings".*

94. The above provision accords wide discretion to the Sole Arbitrator whether to stay the proceedings. In addition, the provision is only applicable in case the parallel proceedings have an identical matter in dispute. This, however, is not the case here. The enforcement of the Appellant's claim in the insolvency proceedings is directed against Harel Holdings (and not against Poalei Tel Aviv Holdings Ltd). Thus, there is no identity of parties to begin with. In the consolidated proceedings before the CAS the claims of the creditors are directed against Poalei Tel Aviv Holdings Ltd. However, the creditors in said consolidated proceedings are different from the Appellant in the case at hand. Thus, also insofar there is no identity of parties.

95. The Sole Arbitrator is aware that also independently of *lis pendens* there may be reasons that warrant a stay of the proceedings. However, any suspension of the arbitration may result in a delay or denial of justice. In view of these negative effects of a stay the SFT has ruled that an arbitral tribunal

> *"should in case of doubt give priority to the principle that the proceedings must be conducted within reasonable time"* (SFT 4P.64/2004, consid. 3.2).

96. It follows from the above that an arbitral tribunal seated in Switzerland may suspend the arbitration in exceptional circumstances only, i.e., either based on specific statutory provisions or for other compelling reasons (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed. 2021, no. 1182). Such reasons may exist – e.g. – if

> *"events occur which affect the legal existence or the capacity of a party, or if questions need to be clarified which are important for the outcome of the case but lie outside the jurisdiction of the arbitral tribunal"* (SFT 4P.64/2004, consid. 3.2).

97. The Sole Arbitrator finds that no such reasons exist in the case at hand. The Sole Arbitrator is aware that the consolidated proceedings were joined together at the time to ensure a unform decision in all the matters. However, the Sole Arbitrator also notes that staying a procedure heavily impacts on the rights of the Appellant on access to justice. Furthermore, the Sole Arbitrator finds that he need not await the outcome of these other proceedings (before the Israeli Court or the CAS) to decide the matter at hand, since this matter is ripe for decision (cf. below). Consequently, the Sole Arbitrator will not suspend the proceedings.

VIII. APPLICABLE LAW

98. Article R58 of the Code provides as follows:

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

99. The Sole Arbitrator notes that Article 57(2) of the FIFA Statutes states the following:

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

100. The Sole Arbitrators, therefore, applies the relevant FIFA rules and regulations, as in force at the relevant time of the dispute. Furthermore, the Sole Arbitrator will apply Swiss law as an interpretative tool should the need arise to interpret FIFA's rules and regulations. In case the need arises to fill gaps in the various regulations of FIFA, the Sole Arbitrator will address the issue of the applicable law separately.

IX. MERITS

101. The main questions in the matter at stake are

(i) Whether the PSC was competent to deal with the Appellant's request and

(ii) in case the first question is answered in the affirmative whether the Appellant's requests are justified.

A. No Circumvention

102. The Appellant on 16 October 2020 initiated disciplinary/enforcement proceedings before the DC (cf. supra no. 19). As previously stated, the request was dismissed/rejected by the DC on 26 October 2020 for procedural reasons. The question, thus, is whether the Appellant was entitled to proceed based on Article 24ter RSTP against the First Respondent before the PSC even though the DC had dismissed his claim to enforce the CAS Award against the First Respondent. The Respondents have qualified this "maneuver" of the Appellant as a "circumvention" of the applicable rules, thereby questioning the Appellant's legitimacy to initiate/continue the proceedings before the PSC based on Article 24ter RSTP.

103. Whether the Appellant's "maneuver" can be qualified as a "circumvention" depends on the relationship between the proceedings underlying Article 15 FDC ("enforcement proceedings") and Article 24ter RSTP ("main proceedings"). The Sole Arbitrator notes that the FIFA regulations are silent on the relationship between the two different avenues. It is rather evident that an enforcement proceeding requires that a decision or an award has been previously rendered against the original debtor. Thus, if no such decision or award exists, the only possible option to proceed against an alleged sporting successor is to lodge a main proceeding (based on Articles 24ter, 22 RSTP).

104. The question, however, is what happens if the creditor holds a decision or an award against the original debtor. Is the creditor in such case free to choose whether to lodge a new main proceeding against the alleged sporting successor (Article 24ter RSTP) or to initiate enforcement proceedings (based on Article 15 FDC) against the alleged sporting successor? May he/she even do so concurrently?

105. The Sole Arbitrator observes that different procedural rules apply in enforcement and main proceedings and that different adjudicatory bodies are competent. Furthermore, the decisions of the PSC and the DC are independently appealable to the CAS. To prevent contradictory decisions, which is neither in the interest of the parties nor in the interest of good administration of justice, there needs to be some kind of coordination between both proceedings. Otherwise, a creditor – e.g. – who failed in the enforcement proceedings, because the DC did not qualify the "new club" as a sporting successor of the original debtor, could relitigate the question of sporting succession via Articles 24ter, 22 RSTP. Vice versa, the "new club" that was found to be a sporting successor in the enforcement proceedings could file a request for negative declaratory relief that he is not a sporting successor before the PSC/DRC.

106. The "enforcement proceedings" and the "main proceedings" – absent any specific provision in the FIFA regulations – cannot be coordinated via *lis pendens* (in case of simultaneous proceedings) or *res judicata* (in case of subsequent proceedings), because as shown above the matter in dispute in enforcement and main proceedings is different. One may argue – based on

Article 5(4) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("Procedural Rules") – that once the DC has decided on the question of sporting succession in enforcement/disciplinary proceedings there are no longer legitimate reasons for the parties to initiate main proceedings. Article 5(4) of the Procedural Rules reads as follows:

> *"A claim shall be dealt with by the Players' Status Committee and the DRC only if there is a legitimate reason for dealing with the claim".*

107. Be it as it may, the Sole Arbitrator finds that the proceedings initiated by the Appellant before the PSC are neither a circumvention nor do they lack a legitimate reason, since the DC has not decided on the substantive issue of sporting succession but has dismissed the Appellant's request for an enforcement of the CAS Award as inadmissible. Thus, the Appellant has not played off the two proceedings against each other and consequently, there is no room to assume circumvention by the Appellant.

B. The Nature of the Appellant's Claim

108. The Parties are in dispute whether the claim filed by the Appellant falls within the competence of the PSC. The competence of the PSC is described in Articles 23(2), 22(1) lit. c, f and 22(2) RSTP as follows:

> *Article 23(2)*
>
> *"The Players' Status Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 c) and f), and 2".*
>
> *Article 22(1) "Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: …*
>
> *c) employment-related disputes between a club or an association and a coach of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of coaches and clubs; …*
>
> *f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).*
>
> *Article 22(2)*
>
> *FIFA is competent to decide regulatory applications made pursuant to these regulations or any other FIFA regulations".*

109. The provision at stake here is Article 22(1) lit. c) RSTP. According thereto the PSC is competent if the case is an employment-related dispute of an international dimension involving a coach. It is undisputed that Appellant is a coach and that the dispute has an international dimension. What appears questionable, however, is whether the dispute is "employment-related".

110. In order to qualify the nature of the dispute at hand one needs to look at the core or substance of the dispute, i.e., whether it originates in an employment relationship. The Sole Arbitrator finds that this is the case since it is the employment contract between the Appellant and the original debtor (Harel Holdings) that gives the present litigation its character. The issue of sporting succession, on the contrary, is of "secondary importance" and does not change the nature of the dispute. This also follows from the wording of Article 24ter RSTP. The provision states as follows:

> *"The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

111. It follows from the above provision that a claim against the (alleged) sporting successor can be pursued as if the latter was the original debtor, i.e., that the alleged sporting successor "steps into the procedural shoes of the original debtor". This, however, is only possible, if the claim against the sporting successor is of the same nature as the claim against the original debtor. It follows, thus, from the above provisions that sporting succession – as e.g., in cases of legal succession, legal or contractual assumption of debt (cf. KuKo-ZPO/HAAS/STRUB, 3rd ed. 2021, Article 2 no. 5a) – does not change the nature of the matter in dispute. The effects of the provision on sporting succession are that the successor at the end of the day becomes akin to a "party" to the employment relationship. Consequently, the Sole Arbitrator finds that the dispute between the Appellant and the alleged sporting successor (First Respondent) is of an employment-related nature and that the prerequisites of Article 22(1) lit. c RSTP are, in principle fulfilled.

112. The Appellant before the PSC has filed a request for declaratory relief and has not asked for a performance judgement by the PSC. In the view of the Sole Arbitrator, however, the type of request (declaratory relief or for performance) is immaterial for qualifying the nature of the dispute.

C. Derogation of the Competence of the PSC

a. The autonomy of the parties

113. It is within the parties' autonomy to derogate from the competence of the adjudicatory bodies of FIFA. This follows from Article 22(1) RSTP, which states in the introductory sentence as follows:

> *"Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes …".*

114. It is true that the provision only refers to a jurisdiction clause conferring competence to state courts. However, the autonomy of the Parties is not confined to jurisdiction clauses. Article 22(1) lit. c) RSTP explicitly states that the parties to a contract may

> *"opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement".*

115. If, however, the parties may refer a dispute to a national arbitral tribunal nothing prevents them from opting out from Article 22 RSTP also in favour of the CAS. This, however, is exactly what happened in the case at hand, since the Employment Contract entered into by the Appellant provides in Article 7 that

> *"… any question derived from the application, interpretation, application and/or execution of this agreement will be solved by the Arbitral Court of the Sport (TAS/CAS) … based in Lausanne, in conformity with its normative of procedure …".*

116. In doing so, the Parties have ousted the jurisdiction of the FIFA adjudicatory bodies as a first instance and referred any dispute arising from the employment relationship directly to the CAS.

b. The subjective scope of the agreement entered into

117. The dispute resolution clause (clause 7 of the Employment Contract) obviously binds the parties to the Employment Contract (Harel Holdings and the Appellant). The question at stake here, however, is whether clause 7 of the Employment Contract also covers the dispute between the Appellant and the First Respondent.

118. As previously stated, the effects of sporting succession are akin to a legal assumption of debts. The sporting successor is liable for the creditor' claim arising from the Employment Contract as if he was a party to the contract. In Swiss law in case a person assumes a foreign debt such person is bound to a dispute resolution clause in the original contract. Thus, e.g. the SFT has decided as follows (4A_128/2008, consid. 3.2; see also SFT 4P.126/2001, consid. 2. e) bb):

> *"La reprise de dette externe entraîne le transfert des droits accessoires, au sens de l'art. 178 al. 1 CO, du débiteur au reprenant. La convention d'arbitrage constitue un tel accessoire (Eugen Spirig, Commentaire zurichois, 3e éd., n. 50 ad art. 178 CO; Thomas Probst, Commentaire romand, n. 3 ad art. 178 CO; Rudolf Tschäni, Commentaire bâlois, Obligationenrecht I, 4e éd., n. 1 ad art. 178 CO; Werner Wenger/Christoph Müller, Commentaire bâlois, Internationales Privatrecht, 2e éd., n. 77 ad art. 178 LDIP; Pierre Engel, Traité des obligations en droit suisse, 2e éd., p. 900). Il s'ensuit qu'elle lie le reprenant, sauf exceptions. Cela va de soi dans le cas d'une reprise privative, puisque celle-ci implique une succession à titre particulier dans la qualité de sujet passif de l'obligation, un nouveau débiteur prenant la place de l'ancien. La jurisprudence a aussi reconnu semblable effet à la reprise cumulative de dette (arrêt 4P.126/2001 du 18 décembre 2001, consid. 2e/bb), même si, dans ce cas de figure, il n'y a pas un changement de débiteur, mais l'intervention d'un second débiteur qui devient débiteur solidaire aux côtés du débiteur primitif (Probst, op. cit., n. 13 ad Intro. art. 175-183 CO). La solution retenue pour ce type de reprise de dette externe peut paraître moins évidente, étant donné qu'il n'y a pas ici de substitution*

de débiteur; elle se justifie, toutefois, à l'instar de celle qui a été adoptée pour l'autre forme de reprise de dette, par le motif que la clause compromissoire, en tant qu'accessoire de la dette reprise et, comme tel, indissociable de celle-ci, passe au reprenant, sauf stipulation contraire, lorsque ce dernier acquiert la qualité de codébiteur solidaire de ladite dette, quand bien même elle continue à lier le débiteur primitif. Il ne serait d'ailleurs guère expédient, du point de vue de l'économie de la procédure, de contraindre le créancier à faire valoir simultanément la même créance devant un tribunal arbitral à l'encontre du débiteur primitif et devant le juge ordinaire à l'encontre du reprenant, sans compter le risque de décisions contradictoires que comporterait la mise en oeuvre de deux instances. Au demeurant, la solution adoptée n'aggrave pas la position du nouveau codébiteur, puisque celui-ci sait, en reprenant cumulativement la dette, qu'il pourra être assigné par le créancier devant une juridiction arbitrale et qu'il peut ainsi, soit refuser la reprise de dette, soit convenir avec le créancier de ne pas appliquer la clause arbitrale pour trancher les différends qui pourraient les diviser".

Free translation : The assumption of an external debt leads to the transfer of ancillary rights within the meaning of Art. 178 para. 1 CO from the debtor to the assignee. The arbitration agreement is such an ancillary right (Eugen Spirig, Zürcher Commentary, 3rd ed., no. 50 on Art. 178 CO; Thomas Probst, Commentary on French-speaking Switzerland, no. 3 on Art. 178 CO; Rudolf Tschäni, Basle Commentary, Obligationenrecht I, 4th ed, Werner Wenger/Christoph Müller, Basle Commentary, Internationales Privatrecht, 2nd edn, n. 77 on Art. 178 IPRA; Pierre Engel, Traité des obligations en droit suisse, 2nd edn, p. 900). It follows that it is binding on the receiving party, with certain exceptions. This is self-evident in the case of a privative repossession, since it implies a succession by particular title in the capacity of passive subject of the obligation, a new debtor taking the place of the old one. The case law has also recognised a similar effect in the case of the cumulative assumption of a debt (judgment 4P.126/2001 of 18 December 2001, recital 2e/bb), even though in this case there is no change of debtor, but the intervention of a second debtor who becomes a joint and several debtor alongside the original debtor (Probst, op. cit., n. 13 ad Intro. art. 175-183 CO). The solution adopted for this type of external debt assumption may seem less obvious, given that there is no substitution of debtors here; However, it is justified, like the solution adopted for the other form of debt assumption, on the grounds that the arbitration clause, as an accessory to the debt assumed and, as such, indissociable from it, passes to the assignee, unless otherwise stipulated, when the latter acquires the status of joint and several debtor of the said debt, even if it continues to bind the original debtor. Moreover, it would hardly be expedient, from the point of view of the economy of the procedure, to force the creditor to assert the same claim simultaneously before an arbitral tribunal against the original debtor and before the ordinary court against the transferee, not to mention the risk of contradictory decisions that would be involved in the implementation of two instances. Moreover, the solution adopted does not worsen the position of the new co-debtor, since the latter knows that, by taking over the debt cumulatively, he may be summoned by the creditor before an arbitration court and that he may thus either refuse to take over the debt or agree with the creditor not to apply the arbitration clause to settle any disputes that may divide them.

119. Whether the assumption of debt is contractual or statutory is not material in order to extend the scope of the dispute resolution clause. According to Swiss law also a partner of simple

partnership (who by law assumes the debts of the partnership) is bound by the dispute resolution clause contained in a contract between the partnership and a third person (cf. Superior Court of Zurich ZH LB190029-O/U, consid. 2.5; KuKo-ZPO/HAAS/SCHLUMPF, 3rd ed. 2021, Article 17 no. 22). The decisive aspect according to the SFT to extend the subjective scope of the dispute resolution clause (4A_128/2008, consid. 3.2) is the following

> *"Du point de vue fonctionnel, la reprise cumulative de dette est un moyen de sûretés servant à garantir une créance (Probst, op. cit., n. 7 ad Intro. art. 175-183 CO). Cela ne signifie pas pour autant que les autres formes de sûretés (cautionnement, porte-fort, garantie bancaire, etc.) doivent être traitées de la même manière qu'elle sous le rapport de la convention d'arbitrage. En effet, la situation des autres garants se distingue fondamentalement de celle du reprenant en ce sens que les premiers, à l'inverse du second, ne deviennent pas les sujets passifs de la dette garantie, mais contractent une autre obligation, indépendante (porte-fort) ou accessoire (cautionnement), en vue de garantir le paiement de cette dette. Aussi n'est-il pas possible de considérer la convention d'arbitrage contenue dans le contrat principal comme un accessoire de la dette découlant du contrat de garantie lato sensu".*
>
> **Free translation** : From a functional point of view, the cumulative assumption of debt is a form of security for securing a claim (Probst, op. cit., n. 7 ad Intro. art. 175-183 CO). This does not mean, however, that other forms of security (guarantee, surety, bank guarantee, etc.) must be treated in the same way as this with regard to the arbitration agreement. In fact, the situation of the other guarantors is fundamentally different from that of the purchaser in that the former, unlike the latter, do not become the passive subjects of the guaranteed debt, but enter into another obligation, independent (surety) or accessory (guarantee), in order to guarantee the payment of that debt. Therefore, it is not possible to consider the arbitration agreement contained in the main contract as an accessory to the debt arising from the collateral agreement in the lato sensu

120. Since – in the words of the SFT – the sporting successor does not enter into a separate obligation vis-à-vis the creditor but becomes *"the passive subject of the guaranteed debt"* of the sporting predecessor, the scope of the original dispute resolution clause also extends to the alleged sporting successor.

121. It follows from the above, that the Employment Contract derogates from Article 22 et seq. of the RSTP and that as a consequence the PSC was not competent to adjudicate the Appellant's claim.

c. Conclusion

122. To conclude, therefore, the Sole Arbitrator finds that the PSC rightly rejected to adjudicate the Appellant's claim and that therefore the Appellant's claim must be dismissed. The Sole Arbitrator, therefore, does not need to deal with the question whether the Appellant's claim was time-barred according to Article 25(5) RSTP.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Javier González López against the FIFA decision dated 7 April 2021 is dismissed.

2. The FIFA Decision dated 7 April 2021 is upheld.

3. (…).

4. (…).

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