Arbitration CAS 2022/A/8796 Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Ticaret A.Ş. v. Stoke City FC, award of 27 March 2023

Panel: Prof. Jacopo Tognon (Italy), Sole Arbitrator

Football
Transfer agreement
Principle of interpretation of contracts
Interpretation of a contingent transfer fee

1. **The FIFA regulations do not provide any rules regarding the interpretation of contracts. Therefore, it is necessary to refer to Swiss law. The interpretation of a contract in accordance with Article 18 of the Swiss Code of Obligations aims at assessing the intention the parties had when they concluded the contract. On this basis, the primary goal of interpretation is to ascertain the true common intention (consensus) of the parties. Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been reasonably and ordinarily understood, taking into account the wording, the context as well as all circumstances.**

2. **It is a common practice in the football industry to link the amount of contingent transfer fees provided for in a transfer agreement with the sporting results of the club to which the player is being transferred achieved after the acquisition of a player. The purpose of this type of clause is to guarantee to the transferring club an additional transfer fee, the amount of which would be dependent on the sporting merit of the club to which the player is transferred. A minimum guaranteed amount may be provided for in this respect.**

I. PARTIES

1. Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Ticaret A.Ş (the "Appellant" or "Trabzonspor") is a professional football club based in Trabzon, Turkey. It is a member of the Turkish Football Federation ("TFF") which in turn is affiliated with the *Féderation Internationale de Football Association* ("FIFA").

2. Stoke City FC (the "Respondent" or "Stoke City") is a professional football club based in Stoke-on-Trent, United Kingdom. It is a member of the Football Association ("FA") which in turn is affiliated with the *Féderation Internationale de Football Association* ("FIFA").

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the remote hearing on 4 October 2022. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

5. On 21 December 2019, the Parties entered into a temporary transfer agreement (the "Agreement") regarding the player X. (the "Player"), by means of which the Player was temporarily transferred from Stoke City to Trabzonspor for the period from 20 December 2019 until 30 June 2020.

6. Various types of the Respondent's remuneration – including guaranteed and contingent remuneration – for the temporary transfer of the Player were stipulated in Clauses 2, 3 and 4 as well as in Clause 6 of the Agreement.

7. Accordingly, Clause 2 of the Agreement provided that:

"IN consideration of the termporary transfer of the Player's registration Trabzonspor agrees to pay to Stoke City subject to and in accordance with the terms hereof the guaranteed sum of £150,000 (One Hundred and Fifty Thousand Pounds) payable on 1st March 2020".

8. Clause 3 of the Agreement provided as follows:

"IN further consideration of the temporary transfer of the Player's registration, in the event that Trabzonspor fails to qualify for the UEFA Champions League or UEFA Europa League group stages for 2020/2021 season, then Trabzonspor shall pay to Stoke City a further contingent sum of £100,000 (One Hundred Thousand Pounds) payable on 31th (sic!) *August 2020".*

9. Clause 4 of the Agreement stipulated a contigent remuneration in the total amount of GBP 100,000 due to the Respondent in the event that the Player would not be fielded in a specific number of matches in the Turkish Super League.

10. Clause 5 of the Agreement provided – in its relevant parts – that:

"IN the event that Trabzonspor:

(a) qualify for the UEFA Champions League group stages through being the champions of Turkish Super Lig for season 2020/2021, Trabzonspor shall have the option exercisable in writing at any time after

satisfaction of the Condition and prior to 11.59pm on 30th June 2020 ('an Option Notice') to purchase the registration of the Player on a permanent basis. […]

(b) qualify for the UEFA Europe League group stages for season 2020/2021, Trabzonspor shall have the option exercisable in writing at any time after satisfaction of the Condition and prior to 11.59pm on 30th June 2020 ('an Option Notice') to purchase the registration of the Player on a permanent basis. […]".

11. Clause 6 of the Agreement stipulated that:

"In the event that Trabzonspor do not serve an Option Notice pursuant to clause 5 above then Trabzonspor agrees to pay to Stoke City, subject to any deductions to be made pursuant to clause 7, further contingent sums as follows:

(a) The sum of £850,000 (Eight Hundred and Fifty Thusand Pounds) on 30th June 2020 in the event that Trabzonspor have qualified for the UEFA Champions League group stages for season 2020/2021, payable by 31st August 2020; or

(b) The sum of £100,000 (Hundred Thousand Pounds) on 30th June 2020 in the event that Trabzonspor have qualified for the UEFA Europa League group stages for season 2020/2021, payable by 31st August 2020".

12. Clause 7 of the Agreement provided for the right to deduct from each and every sum payable to the Respondent the amount of solidarity contribution due under Article 21 and Annex 5 to the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP").

13. On 3 June 2020, the *Union des Associations Européennes de Football* ("UEFA") announced that the UEFA Club Financial Control Body Adjudicatory Chamber ("UEFA CFCB AC") ordered that the Appellant be excluded from participating in one UEFA club competition for which it would otherwise qualify in the 2020/2021 and 2021/2022 football seasons due to the Appellant's failure to meet the target fixed with respect to its financial results for the 2019 financial year (the "UEFA CFCB AC Decision").

14. On 25 June 2020, the Parties concluded the Amendment to the Temporary Transfer Agreement (the "Amendment Agreement") by means of which they agreed to extend the duration of the Agreement until 31 July 2020 due to postponement of the competitions as a result of the COVID-19 outbreak and to amend several other provisions thereof.

15. Accordingly, Clause C of the Amendment Agreement provided that:

"Clause 3 of the Temporary Transfer Agreement shall be amended to read as follows:

3. IN the event that Trabzonspor fails to qualify for the UEFA Champions League or UEFA Europa League group stages for 2020/2021 season, then Trabzonspor shall pay to Stoke City a further contingent sum of £100,000 (One Hundred Thousand Pounds) payable on either:

i. 31st August 2020, or;

ii. within 14 days from when such qualification failure is confirmed, whichever is the later".

16. Clause E of the Amendment Agreement provided – in its relevant parts – that:

"Clause 5 of the Temporary Transfer Agreement shall be amended to read as follows:

5. IN the event that Trabzonspor:

(a) qualify for the UEFA Champions League group stages through being the champions of Turkish Super Lig for season 2020/2021, Trabzonspor shall have the option exercisable in writing at any time after satisfaction of the Condition and prior to 11.59pm on 31st July 2020 ('an Option Notice') to purchase the registration of the Player on a permanent basis. […]

(b) qualify for the UEFA Europe League group stages for season 2020/2021, Trabzonspor shall have the option exercisable in writing at any time after satisfaction of the Condition and prior to 11.59pm on 31st July 2020 ('an Option Notice') to purchase the registration of the Player on a permanent basis. […]".

17. Clause F of the Amendment Agreement provided as follows:

"Clause 6 of the Temporary Transfer Agreement shall be amended to read as follows:

6. In the event that Trabzonspor do not serve an Option Notice pursuant to clause 5 above then Trabzonspor agrees to pay to Stoke City, subject to any deductions to be made pursuant to clause 7, further contingent sums as follows:

(a) The sum of £850,000 (Eight Hundred and Fifty Thusand Pounds) in the event that Trabzonspor have qualified for the UEFA Champions League group stages for season 2020/2021, or;

(b) The sum of £100,000 (Hundred Thousand Pounds) in the event that Trabzonspor have qualified for the UEFA Europa League group stages for season 2020/2021

(c) Any payment under this clause shall be payable on either:

iii. 31st August 2020, or;

iv. within 14 days from when such qualification is confirmed, whichever is the later"[1].

18. On 26 July 2020, the 2019/2020 football season of the TFF Super League was completed, with Trabzonspor finishing in 2nd place. As a result, Trabzonspor qualified to the UEFA Champions League Qualifying Round 2 ("Q2").

[1] For the sake of good order, any reference made hereafter to any Clause of the Agreement shall be understood as a reference to such Clause as amended by the Amendment Agreement, as the case may be, unless otherwise explicitly indicated in this Award.

19. On 29 July 2020, Trabzonspor won the Turkish Cup of the 2019/2020 football season.

20. On 30 July 2020, the Court of Arbitration for Sport ("CAS") dismissed Trabzonspor's appeal against the UEFA CFCB AC Decision.

21. On 10 November 2020, Stoke City sent to Trabzonspor an invoice amounting to GBP 100,000.00, related to *"Contingent loan fee in accordance with Clause 3 of the Temporary Transfer Agreeement dated 21st December 2019 (failing to qualify for group stages of UEFA Champions League and/or UEFA Europa League for 2020/21 season)"*.

22. On 12 November 2020, Trabzonspor sent a letter to Stoke City contesting its obligation to pay the above-mentioned invoice. Accordingly, the Appellant argued that

*"**Trabzonspor qualified for the UEFA Champions League for 2020/2021 season** as it finished the Turkish Super League in the second place. However, the Club could not **participate** it* (sic!)*, as a result of the UEFA CFCB decision excluding Trabzonspor from one UEFA club competition for which the Club might qualify in the 2020/21 and 2021/22 seasons"*.

23. On 7 January 2021, Stoke City resent to Trabzonspor the same invoice, inquiring about when it would be paid.

24. On 8 January 2021, Trabzonspor reiterated its position expressed in its letter dated 12 November 2020 and requested Stoke City to annul the invoice in question.

25. On 11 February 2021, Stoke City sent a letter to Trabzonspor in which it requested payment of the respective invoice and argued that:

"Whilst we do not necessarily accept that Trabzonspor did, in fact, qualify for the 2020/21 UEFA Champions League due to the fact that the UEFA CFCB decision to exclude Trabzonspor had already been made prior to the conclusion of the 2019/20 season, it is not particularly relevant in this case because Trabzonspor did not qualify for the group stages of the competition and so the conditional fee set out in clause 3 of the Loan Agreement is payable".

26. On 8 March 2021, Trabzonspor sent another letter to Stoke City, essentially reiterating its position as to the payment of the contingent fee pursuant to Clause 3 of the Agreement and providing further arguments to support it.

27. On 21 October 2021, Stoke City's legal representatives sent a letter to Trabzonspor in which it was essentially argued that the disputed contingent fee of GBP 100,000.00 is due either on the basis of Clause 6(b) or, alternatively, Clause 3 of the Agreement.

28. Until the date of issuing this Award, the Parties did not inform the CAS of any payment related to the disputed contingent fee made by Trabzonspor to Stoke City.

B. Proceedings before the FIFA Players' Status Chamber

29. On 20 December 2021, Stoke City filed a claim before the FIFA Players' Status Chamber (the "FIFA PSC") by means of which it requested that:

> *"A. The Respondent pays to the Claimant within 14 days the following sums*
>
> *(i) £100,000[7] in respect of its liability under the Agreement*
>
> *(ii) $3000 in respect of the Fixed Advance of Costs paid by the Claimant*
>
> *B. The Respondent pay the Fixed Procedural Costs of the PSC*
>
> *[…]*
>
> *[7] Subject to any adjustment required pursuant to clause 7 where applicable".*

30. On 3 March 2022, the FIFA PSC rendered the decision on the matter in question under ref. no. FPSD-4599 (the "Appealed Decision"), in which it was decided, *inter alia*, that:

> *"1. The claim of the Claimant, Stoke City Football Club, is accepted.*
>
> *2. The Respondent, Trabzonspor Sportif Zatirim ve Futbol Isletmeciligi, has to pay to the Claimant, the outstanding amount of GBP 100,000".*

31. In its grounds, the FIFA PSC acknowledged that the heart of the dispute lied in one particular point, i.e. if the conditions precedent triggering the payment of a contingent transfer fee of GBP 100,000 were fulfilled. While it was disputed between the Parties which UEFA club competition Trabzonspor in fact qualified for, the FIFA PSC deemed that due to the limitation of the claim to GBP 100,000, this issue could be left open. Nevertheless, the FIFA PSC was of the opinion that Trabzonspor indeed qualified for the UEFA club competition, even if it was not able to participate therein. In this respect, the FIFA PSC concluded that *"the participation in said competition was not a pre-requisite to the respective entitlement"* and that *"the exclusion of* [Trabzonspor] *from the UEFA Competition is something in* [Trabzonspor]*'s scope of actions and should not, in any event, be used as an excuse not to fulfil its financial liabilities".*

32. Therefore, bearing in mind the principle of *pacta sunt servanda*, the FIFA PSC found Trabzonspor liable to pay to Stoke City the contingent transfer fee in the total amount of GBP 100,000.

33. On 18 March 2022, the grounds of the Appealed Decision were notified to the Parties.

III. Proceedings before the Court of Arbitration for Sport

34. On 7 April 2022, the Appellant filed the Statement of Appeal against the Appealed Decision with the CAS in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration,

Edition 2021, (the "CAS Code"). In its Staement of Appeal, the Appellant requested that the proceedings be conducted in English and that the dispute be submitted to a sole arbitrator.

35. On 14 April 2022, the Appellant requested an extension of 10 days to file its Appeal Brief pursuant to Article R32 para. 2 of the CAS Code.

36. On the same date, the CAS Court Office, without prejudice to the opening of the procedure and on behalf of the CAS Director General, the CAS Court Office informed the Appellant that the time limit to file its Appeal Brief was extended by 10 days.

37. On 26 April 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal and enclosed a copy thereof to the Respondent together with the CAS letters of 14 and 20 April 2022 and the Appellant's letters of 14 and 21 April 2022. The CAS Court Office invited the Respondent to inform whether it agreed to the appointment of a sole arbitrator in the present case within 5 days as from receipt of this letter by courier. Furthermore, the CAS Court Office informed that unless the Respondent objects within 3 days from receipt of this letter by courier, the language of the proceedings shall be English. Lastly, the CAS Court Office invited the Parties to inform it if they were interested in the submission of these proceedings to mediation.

38. On 28 April 2022, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

39. On the same date, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief. In addition, the CAS Court Office informed the Parties that, pursuant to Article R55 of the CAS Code, the Respondent shall file its Answer within 20 days as from receipt of this letter by e-mail.

40. On 6 May 2022, FIFA informed the CAS Court Office that it renounced its right to intervene in the present proceedings and provided the CAS Court Office with a clean copy of the Appealed Decision.

41. On 9 May 2022, the Respondent requested an extension of 10 days to file its Answer pursuant to Article R32 para. 2 of the CAS Code.

42. On the same date, the CAS Court Office acknowledged receipt of the Respondent's letter. On behalf of the CAS Director General, the CAS Court Office confirmed that the Respondent's deadline to file its Answer was extended by 10 days.

43. Still on 9 May 2022, the CAS Court Office acknowledged receipt of the clean copy of the Appealed Decision provided by FIFA and enclosed it to the Parties, informing that FIFA renounced its right to intervene in the present proceedings.

44. On 27 May 2022, the Respondent filed its Answer in accordance with Article R55 of the CAS Code. Furthermore, the Respondent informed that it did not intend to pay its share of the advance of costs.

45. On 10 June 2022, the CAS Court Office acknowledged receipt of the Respondent's Answer and recalled the provision of Article R56 of the CAS Code. The CAS Court Office further invited the Parties to inform it, by 15 June 2022, whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

46. On 15 June 2022, the Respondent informed the CAS Court Office that it would prefer for the Sole Arbitrator to issue the award based on the Parties' written submissions.

47. On the same date, the Appellant informed the CAS Court Office that it requested a hearing to be held in this procedure.

48. On 25 July 2022, the CAS Court Office acknowledged receipt of the Appellant's payment of the total of the advance of costs. Furthermore, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, the Panel had been constituted as follows:

Sole Arbitrator: Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy.

49. On 8 August 2022, the CAS Court Office, *inter alia*, informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which would be held by videoconference.

50. On 23 August 2022, the CAS Court Office informed the Parties that the hearing in this matter would take place on 4 October 2022 by videoconference and invited the Parties to provide the CAS Court Office with the details of all persons attending the hearing by 13 September 2022.

51. On 24 August 2022, the CAS Court Office provided the Parties with the Order of Procedure and requested them to sign and return a copy thereof by 31 August 2022.

52. On 1 September 2022, the CAS Court Office acknowledged receipt of the Appellant's signed Order of Procedure and noted that the Respondent did not provide its copy thereof within the granted time limit. Accordingly, the Respondent was requested to do so without delay.

53. On 2 September 2022, the CAS Court Office acknowledged receipt of the Respondent's signed Order of Procedure.

54. On 4 October 2022, the hearing took place. In addition to the Sole Arbitrator and Mr Björn Hessert, Counsel to the CAS, the following persons attended the hearing:

On behalf of the Appellant:

- Ms Duygu Yaşar – legal counsel,

On behalf of the Respondent:

- Mr Gareth Wilkinson – legal counsel,

- Mr Marc Cavaliero – legal counsel.

55. At the outset of the hearing, the Parties confirmed that they had no procedural objections as to the conduct of the proceedings and the appointment of the Sole Arbitrator. During the hearing, the Parties made submissions in support of their respective arguments as referred in the next section of the Award.

56. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant's Position

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

- The Appellant argues that the Agreement may trigger payment of the contingent transfer fee of GBP 100,000 either pursuant to Clause 3 – if Tranzonspor would fail to qualify for the UEFA club competitions – or pursuant to Clause 6 – if it would qualify for the UEFA Champions League group stage or the UEFA Europa League group stage.

- The Appellant concurs with the findings of the Appealed Decision that participation in relevant competitions is not a pre-requisite for *"qualification"* within the meaning of Clause 3 and Clause 6 of the Agreement. However, the Appellant submits that it indeed qualified for the UEFA club competitions which excludes the applicability of Clause 3 of the Agreement. Therefore, according to the Appellant, it is necessary to establish for which competition it qualified to determine whether the contingent transfer fee stipulated in Clause 6 of the Agreement is due.

- The Appellant indicates that as a result of finishing the TFF Super League in the 2019/2020 football season in 2nd place, it qualified for the UEFA Champions League, however not for its group stage. At the same time, there is no legal basis for claiming that the Appellant qualified for the UEFA Europa League group stage for winning the Turkish Cup in the same season, as it would only happen if Trabzonspor did not qualify for the UEFA Champions League. According to the Appellant, a team cannot qualify for both of those competitions based on the results of the domestic championship.

- Therefore, the Appellant argues that it qualified neither for the UEFA Champions League group stage nor for the UEFA Europa League group stage. The Appellant underlines that this outcome is not attributable to the UEFA CFCB AC Decision as it would be the same if the UEFA CFCB had decided not to exclude Trabzonspor from the UEFA club competitions. As a result, none of the conditions set forth in Clause 6 of the Agreement were met and therefore no contingent transfer fee deriving therefrom is due.

- In addition, the Appellant contends that the wording of the contract and the context in which it was used is the starting point for its interpretation. Additional factors – such as the purpose of the contract, the parties' interests in its performance, the parties' conduct before and after execution of the contract and the relevant customs – may be considered to determine whether the wording of the contract is consistent with the parties' intent. The party claiming that there is a discrepancy between the wording of the contract and the real intent of the parties bears the relevant burden of proof. Moreover, if the wording of the contract is clear enough, there is no room to apply further interpretation methods.

- In this respect, the Appellant argues that there is no clause in the Agreement which would provide for a minimum guaranteed additional payment of GBP 100,000. Therefore, it is the Respondent who bears the burden of proof with reference to a discrepancy between the wording of the Agreement and the real intent of the Parties. In the Appellant's view, the Respondent did not discharge such a burden of proof.

- As a result, the Appellant shall not be liable to pay the Respondent the amount of GBP 100,000.

58. The Appellant's request for relief is the following:

"- to set aside the challenged decision,

- to confirm that the Appellant is not liable to pay any amount to the Respondent,

- to establish that the costs of the arbitration procedure shall be borne by the Respondent,

- to condemn the Respondent to the payment in the favor of the Appellant of the legal expenses incurred".

B. The Respondent's Position

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

- The Respondent firstly submits that the Appellant shall, in principle, be liable to pay Stoke City the amount of GBP 100,000 pursuant to Clause 6(b) of the Agreement. In this respect, the Respondent agrees that *"qualification"* within the meaning of Clause 3 and Clause 6 Agreement does not require participation in a given competition. Therefore, according to the Respondent, it shall be accepted that winning the Turkish Cup by Trabzonspor meant that it had enjoyed the necessary level of success that would ordinarily result in the qualification for the UEFA Europa League group stage. Therefore, the Appellant's liability under Clause 6(b) of the Agreement arised upon Trabzonspor becoming the champion of the Turkish Cup in the 2019/2020 football season.

- However, should the foregoing position of the Respondent be found to be incorrect, the Appellant shall nonetheless be found liable to pay the same amount under Clause 3 of the Agreement in consequence of its failure to qualify for the group stages of either the UEFA Europa League or the UEFA Champions League. Since, by finishing the TFF

Super League in the 2019/2020 football season in 2nd place, the Appellant qualified for the UEFA Champions League Q2 and did not subsequently qualify for the group stage of the same, it follows that it fulfilled the requirement of Clause 3 of the Agreement. For the avoidance of doubt, the Respondent asserts that the *"group stages"* referred to in Clause 3 of the Agreement concern both the abovementioned UEFA club competitions.

- Nevertheless, the Respondent argues that the true and common intention of the Parties when concluding the Agreement was to envisage an additional guaranteed transfer fee, the amount of which would be dependent on the Appellant's sporting merit. This was meant to be achieved by combined inclusion of Clause 3 and Clause 6 of the Agreement. The minimum amount of such additional guaranteed transfer fee was GBP 100,000, stipulated in Clause 3 and Clause 6(b). Such conclusion shall derive from interpretation of the contractual clauses pursuant to Article 18 para. 1 of the Swiss Code of Obligations ("SCO"). The Respondent asserts that if the true and common intent of the Parties cannot be established on the basis of the wording of the Agreement, the Sole Arbitrator shall seek such intention in accordance with the requirements of good faith and the principle of trust.

- In this respect, the Respondent argues that the Appellant's argumentation is inaccurate and does not lead to logical conclusions. Following this argumentation would mean that Trabzonspor would be exempted of any additional payment to Stoke City only in case it ended the season in 2nd place in the TFF Super League. Therefore, Trabzonspor would not have to pay any additional fee in a situation where it reached a better sporting result (runner-up in the domestic league), whereas it would be liable to pay such fee when reaching a worse sporting result (e.g. finish 10th in the domestic league). According to the Respondent, such interpretation does not follow any commercial logic or good faith.

- As a result, the Appellant shall be liable to pay the Respondent an additional guaranteed transfer fee of GBP 100,000 either on the basis of Clause 6(b) or, alternatively, pursuant to Clause 3 of the Agreement.

60. The Respondent's request for relief is the following:

"(i) The Appeal is dismissed.

(ii) The FIFA Decision is confirmed

(iii) The costs of the arbitration shall be borne by the Appellant

(iv) The Appellant shall pay the Respondent's legal costs incurred in consequence of the arbitration".

V. JURISDICTION

61. Article R47 para. 1 of the CAS Code provides as follows:

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

62. Article 57 para. 1 of the FIFA Statutes (May 2021 edition) provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

63. Similarly, the Appealed Decision provides for an appeal to CAS.

64. The jurisdiction of the CAS derives from Article 57 para. 1 of the FIFA Statutes, Article R47 of the CAS Code and is confirmed in the Appealed Decision itself. Furthermore, the jurisdiction of the CAS is not contested by the Respondent and is confirmed by the Order of Procedure duly signed by the Parties.

65. Therefore, the Sole Arbitrator finds that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

66. Article R49 of the CAS Code provides, in its relevant parts, 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".

67. Article 57 para. 1 of the FIFA Statutes, quoted above, provides for a time limit to lodge an appeal against a decision of FIFA's legal bodies, including the FIFA PSC, of 21 days as of receipt of the decision in question.

68. The grounds of the Appealed Decision were notified to the Appellant on 18 March 2022. The Appellant filed its Statement of Appeal on 7 April 2022 and completed it within the time limit granted by the CAS Court Office.

69. The Sole Arbitrator thus concludes that the present appeal is admissible.

VII. APPLICABLE LAW

70. Article R58 of the CAS 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".

71. Article 56 para. 2 of the FIFA Statutes provides as follows:

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

72. Clause 24 of the Agreement provides, in its relevant part, that:

"THIS Agreement shall be governed by and interpreted in accordance with Swiss Law and the FIFA Regulations".

73. The Sole Arbitrator notes that in their written submissions, the Parties explicitly provide that the present dispute shall be resolved pursuant to the applicable regulations of FIFA and, subsidiarily, according to Swiss law.

74. Therefore, the Sole Arbitrator concludes that the applicable regulations in the present dispute are in principle the relevant FIFA regulations, and, subsidiarily, Swiss law.

75. On a separate note, the Sole Arbitrator observes that the present dispute revolves around qualification for the UEFA club competitions. In their written submissions, both Parties made reference to the Access List for the 2020/21 UEFA Club Competitions constituting Annex A to the Regulations of the UEFA Champions League and the Regulations of the UEFA Europa League (Edition 2020/21). Although the relevant UEFA regulations have not been explicitly indicated by the Parties as the applicable law in this case, the Sole Arbitrator finds that in some instances, it may be pertinent to refer to such regulations. Therefore, notwithstanding the applicable law determined in the previous paragraph, the Sole Arbitrator shall make reference, where and if necessary, to the relevant UEFA regulations governing the UEFA club competitions.

VIII. MERITS

76. Having considered the Parties' claims and arguments advanced in their respective written and oral submissions, the Sole Arbitrator has identified the following issues to be resolved in the present proceedings, which will be addressed by answering the following questions:

A. Did the Parties intend to envisage in the Agreement an additional guaranteed transfer fee?

B. Is the Appellant liable to pay the Respondent an additional transfer fee and, in the affirmative, on which legal basis?

A. Did the Parties intend to envisage in the Agreement an additional guaranteed transfer fee?

77. The Sole Arbitrator notes that the Parties are in disagreement as to whether the Agreement was intended to provide for an additional guaranteed transfer fee, the amount of which would depend on the Appellant's sporting merit after acquisition of the Player.

78. Having in mind the foregoing, the provisions of the Agreement shall be interpreted in accordance with the applicable law.

79. The Sole Arbitrator observes that the FIFA regulations, which are the primary source of law in the present case, do not provide any rules regarding the interpretation of contracts. Therefore, it is necessary to refer to Swiss law in this respect.

80. Accordingly, Article 18 para. 1 of the SCO provides as follows:

"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".

81. There is a consistent CAS jurisprudence, based on the abovementioned provision and the relevant Swiss jurisprudence and doctrine, on how to interpret contractual clauses, to which the Sole Arbitrator fully adheres. Accordingly:

"[…] the interpretation of a contract in accordance with Article 18 CO aims at assessing the intention the parties had when they concluded the contract. On this basis, Swiss scholars (WIEGAND, in Basler Kommentar, No. 7 et seq., ad Art. 18 CO) and case law (decisions of the Federal Tribunal of 28 September 1999, ATF 125 III 435, and of 6 March 2000, ATF 126 III 119) have indicated that the primary goal of interpretation is to ascertain the true common intention (consensus) of the parties. Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been understood, taking into account the wording, the context as well as all circumstances" (CAS 2019/A/6525).

82. With respect to interpretation of a contract in accordance with the principle of good faith, the Sole Arbitrator finds it pertinent to recall that:

"The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 133 III 61, consid. 2.2.1; ATF 131 III 606, consid. 4.1; ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The requirements of good faith tend to give the preference to a more objective approach (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration" (CAS 2015/A/4057);

"[…] This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (Winiger, op. cit., n. 26 ad art. 18 CO; Wiegand, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger,

op. cit., n. 33, 37 and 134 ad art. 18 CO; Wiegand, op. cit., n. 29 and 30 ad art. 18 CO)" (CAS 2005/A/871, pg. 19, para. 4.29)" (CAS 2016/A/4790).

83. In addition, the Sole Arbitrator adheres to the findings of another CAS Panel that *"even in case the terms used in a contract have a clear literal (i.e. unambiguous) meaning, the adjudicatory body must assess whether or not the parties truly wished to attribute such meaning to the terms used"* (CAS 2017/A/5172).

84. The Sole Arbitrator observes that the true and common intention of the Parties in including Clause 3 and Clause 6 to the Agreement is at the heart of the present dispute. Therefore, the relevant provisions of the Agreement shall be interpreted in accordance with the principle of good faith. The Sole Arbitrator shall seek the sense of such provisions that should reasonably and ordinarily be attributed to them, having in mind the individual circumstances of the present case.

85. The Sole Arbitrator notes that the basic transfer fee due for the transfer of the Player was envisaged in Clause 2 of the Agreement. Clause 3 and Clause 6 of the Agreement provide for additional, mutually exclusive, contingent transfer fees, the amount of which was dependent on the Appellant's sporting merit.

86. Firstly, the Sole Arbitrator concurs with the findings of the Appealed Decision, in fact not contested by either of the Parties, that participation in a given UEFA club competition is not a prerequisite of *"qualification"* within the meaning of Clause 3 and Clause 6 of the Agreement. In particular, exclusion of the Appellant from the UEFA club competitions in the UEFA CFCB AC Decision is irrelevant for determination whether or not the Appellant qualified for a given competition. This fact remains outside the contractual arrangements of the Parties and – importantly – is not dependent anyhow on the Respondent's behaviour. As a consequence, qualification (or its lack) for a given competition based on the Appellant's sporting results and on the relevant regulations of the UEFA and the TFF is sufficient in order to trigger either Clause 3 or Clause 6 of the Agreement.

87. Secondly, based on the wording of the respective Clauses and the circumstances of the present case, in particular the structure of the transfer fees under the Agreement, the Sole Arbitrator finds that the *"group stages"* referred to in Clause 3 of the Agreement concern both the UEFA Champions League and the UEFA Europa League.

88. Furthermore, the Sole Arbitrator once again notes the Appellant's interpretation of the above-mentioned Clauses and its consequences for the Respondent. According to the Appellant, the fact that it qualified for the UEFA club competitions excludes the applicability of Clause 3 of the Agreement. At the same time, given the fact that Trabzonspor qualified for the UEFA Champions League Q2 and not for the group stage of this competition, Clause 6 of the Agreement shall not be applicable as well. As a result, in a specific situation in which the Appellant finishes the TFF Super League in 2nd place and qualifies for the UEFA Champions League Q2, it is not liable to pay the Respondent any additional transfer fee.

89. In relation to the foregoing, the Respondent rightly points out that such interpretation of Clause 3 and Clause 6 of the Agreement would unreasonably worsen Stoke City's situation

only in this specific scenario. The Sole Arbitrator indeed observes that, when following the Appellant's interpretation of the Agreement, the additional contingent transfer fee would amount to:

- GBP 100,000 – if it finished the TFF Super League in 1st place, qualifying for the UEFA Champions League group stage (Article 6(b) of the Agreement),

- GBP 0 – if it finished the TFF Super League in 2nd place, qualifying for the UEFA Champions League Q2,

- GBP 100,000 – if it won the Turkish Cup and finished the TFF Super League in 3rd place or lower, qualifying for the UEFA Europa League group stage (Article 6(b) of the Agreement),

- GBP 100,000 – if it did not win the Turkish Cup and finished the TFF Super League in 3rd place, qualifying for the UEFA Europa League qualifying round 3 (Article 3 of the Agreement),

- GBP 100,000 – if it did not win the Turkish Cup and finished the TFF Super League in 4th place, qualifying for the UEFA Europa League qualifying round 2 (Article 3 of the Agreement),

- GBP 100,000 – if it did not win the Turkish Cup and finished the TFF Super League in 5th place or lower, not qualifying for any stage of either the UEFA Champions League or the UEFA Europa League (Article 3 of the Agreement).

90. The Sole Arbitrator shares the view of the Respondent that such interpretation of Clauses 3 and 6 of the Agreement does not have any economic and sporting justification. The Respondent would be entitled to receive an additional transfer fee of GBP 100,000 in case the Appellant finished the TFF Super League in the last position, facing relegation, while it would not be entitled to any additional fee if the Appellant finished the same league in 2nd place, thus achieving a considerably higher sporting result.

91. In fact, it could be presumed that professional football clubs acquire new players in order to improve or, at least, maintain their sporting results, as they are directly related to football clubs' financial profits. It would go against reasonable management to make investment in new players in order to worsen the club's sporting results and thus receive lower profits. Furthermore, it is a common practice in the football industry to link the amount of contingent transfer fees with the club's sporting results achieved after the acquisition of a player.

92. Accordingly, the Sole Arbitrator is not convinced that the sense of Clauses 3 and 6 of the Agreement presented by the Appellant is the one that shall ordinarily and reasonably be attributed to them. Following the Appellant's interpretation, the Respondent's entitlement to an additional transfer fee would be excluded only in case the Appellant finished the TFF Super League in the 2019/2020 football season specifically in 2nd place, while in any other case the Respondent would be entitled to an additional amount of at least GBP 100,000. As a

consequence, the Sole Arbitrator is of the opinion that the Appellant's interpretation of the above-mentioned contractual provisions goes against the principle of good faith.

93. On the contrary, the Sole Arbitrator finds that the Respondent correctly interpreted Clause 3 and Clause 6 of the Agreement when arguing that their purpose was to guarantee Stoke City an additional transfer fee, the amount of which would be dependent on the Appellant's sporting merit. In the Sole Arbitrator's view, such interpretation finds reasonable economic and sporting justification. On the basis of the wording of the Agreement and the overall circumstances of the present case, the Sole Arbitrator is convinced that joint inclusion of Clause 3 and Clause 6 of the Agreement was meant to cover all possible scenarios with respect to the Appellant's possible qualification (or failure thereof) for the UEFA Champions League and the UEFA Europa League.

94. Taking into consideration the foregoing, the Sole Arbitrator finds that by including Clauses 3 and 6 of the Agreement, the Parties intended to envisage in the Agreement an additional guaranteed transfer fee, with its minimum guaranteed amount equal to GBP 100,000.

B. Is the Appellant liable to pay the Respondent an additional transfer fee and, in the affirmative, on which legal basis?

95. The Sole Arbitrator shall now determine whether the Appellant is liable to pay the Respondent an additional transfer fee and, in the affirmative, on which legal basis.

96. Having established that Clauses 3 and 6 of the Agreement shall be understood as providing for an additional guaranteed transfer fee, with its minimum guaranteed amount equal to GBP 100,000, the Sole Arbitrator is satisfied that the Appellant shall, in principle, be liable to pay the Respondent the additional transfer fee of GBP 100,000.

97. However, unlike the FIFA PSC in the Appealed Decision, the Sole Arbitrator finds it pertinent to determine on which legal basis such payment is due.

98. In this respect, the Sole Arbitrator notes that at the end of the 2019/2020 football season, the Appellant won the Turkish Cup and finished the TFF Super League in 2nd place. According to the Access List for 2020/21 UEFA Club Competitions and Article 12 sec. 2 let. b) – c) and sec. 3 of the TFF Super League 2019/2020 Season Competition Regulations, winning the Turkish Cup would ordinarily result in qualifying for the UEFA Europa League group stage unless the club was the winner or the runner-up in the TFF Super League, thus qualifying for the UEFA Champions League.

99. As has been established above, participation in a given UEFA club competition is not a prerequisite for the Appellant to be considered to have qualified for it within the meaning of Clause 3 and Clause 6 of the Agreement. In particular, the exclusion of Trabzonspor from the UEFA club competitions in the UEFA CFCB AC Decision does not influence such determination. However, the Sole Arbitrator is of the view that the term *"qualification"* used in the above-mentioned provisions of the Agreement shall be interpreted with due consideration for their effectiveness. In other words, the Appellant should be considered to have qualified

for this UEFA club competion in which it could have effectively participated, in the event it would not have been excluded from the UEFA club competitions on the basis of the UEFA CFCB AC Decision (or should other external factors not have occurred). Therefore, the Sole Arbitrator does not share the view presented by the Respondent that the Appellant should be considered to have qualified for the UEFA Europa League group stage. Despite winning the Turkish Cup in the 2019/2020 football season, the Appellant would nonetheless not be able to participate in this competition, since at the same time, based on the results in the domestic championship, it has qualified for the UEFA Champions League Q2. Therefore, the Respondent's submitted arguments in this respect shall be rejected.

100. Accordingly, the Sole Arbitrator finds that at the end of the 2019/2020 football season, the Appellant effectively qualified for the UEFA Champions League Q2. As a consequence, the Sole Arbitrator is of the view that the requirements for application of Article 6(b) of the Agreement have not been met.

101. Nevertheless, as rightly pointed out by the Appellant, Trabzonspor neither qualified for the UEFA Champions League group stage nor for the UEFA Europa League group stage. Therefore, the Sole Arbitrator finds that the Appellant's obligation to pay the additional transfer fee were triggered pursuant to Clause 3 of the Agreement.

102. Taking into consideration the foregoing, the Sole Arbitrator rules that the Appellant is liable to pay the Respondent an additional transfer fee in the amount of GBP 100,000 pursuant to Clause 3 of the Agreement.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 April 2022 by Trabzonspor Sportif Yatırım ve Futbol İşletmeciliği Ticaret A.Ş against the decision rendered on 3 March 2022 by the FIFA Players' Status Chamber in the case ref. no. FPSD-4599 is dismissed.

2. The decision rendered on 3 March 2022 by the FIFA Players' Status Chamber in the case ref. no. FPSD-4599 is confirmed.

3. (…).

4. (…).

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