Disciplinary Committee

Date: 21 January 2022

Sent to:
Shenzhen FC
12528560@qq.com;
26506262@qq.com;
chenshm@kaisagroup.com

C.C:
Rosenborg BK
Roar.Munkvold@rbk.no;
tore.gronning@rbk.no

Chinese Football Association
info@thecfa.cn

Notification of the grounds of the Decision

Ref. N°: FDD-7671

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the Chairman of the FIFA Disciplinary Committee on 04 November 2021.

The Chinese Football Association (in copy) is kindly requested to forward this decision to its affiliated club, Shenzhen FC.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA

Carlos Schneider
Director of the FIFA Judicial Bodies

Decision of the FIFA Disciplinary Committee

passed on 04 November 2021

DECISION BY:

Mr. Jorge Ivan Palacio, Colombia (Chairman)

ON THE CASE OF:

Shenzhen FC

(Decision FDD-7671)

REGARDING:

Failure to respect decisions (Article 15 FIFA Disciplinary Code)

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the Chairman of the FIFA Disciplinary Committee (**the Single Judge**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of his position and in the ensuing discussion on the merits.

2. On 24 September 2020, the FIFA Administration provided the clubs Shenzhen FC (**the Respondent**) and Rosenborg BK (**the Claimant**) with a proposal related to the distribution of the solidarity contribution in connection with the transfer of the player Ole Kristian SELNÆS (**the Player**) following the transfer of the Player from the French club AS Saint Etienne to the Respondent (also **the Proposal**).

3. This proposal was made in accordance with art. 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (**the Procedural Rules**) as well as FIFA Circular 1689, meaning that Claimant and Respondent had 15 days to either accept or reject the proposal as from the date of notification *via* the Transfer Matching System (**TMS**). In addition, the proposal clearly specified that should the parties accept the proposal or should they fail to provide an answer to FIFA within the stipulated deadline, the proposal would become binding.

4. On 12 October 2020, in view of the fact that both the Claimant and the Respondent failed to provide an answer to the Proposal, the FIFA Administration informed the parties that the proposal had become binding. Consequently, the Respondent had to pay to the Claimant the amount of EUR 180,803.75 plus 5% interest *p.a.* as of 30 days of the due date of each instalment until the date of effective payment (**the FIFA Decision**). In addition, it was specified that should the aforementioned amount(s) not be paid within the given time limit, the Claimant could request the submission of the case to the Disciplinary Committee for consideration and formal decision.

5. On 02 February 2021, the Claimant requested the opening of disciplinary proceedings as the Respondent had not paid the outstanding amounts due to the Claimant.

6. On 16 February 2021, in light of the foregoing, and as the aforementioned amounts were not paid to the Claimant, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) opened disciplinary proceedings against the Respondent. In this regard, the Respondent was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 11 March 2021, and was invited to provide its position within six days of the notification of the opening of the disciplinary proceedings.

7. On the same date (16 February 2021), the Respondent informed the Secretariat that it had made the relevant payment(s) to the Claimant on 18 January 2021 and attached the relevant proof of payment in this regard.

8. On 17 February 2021, the Respondent sent a communication to the Claimant, the Secretariat reading in copy, informing *inter alia* that it had already paid the outstanding amounts due to the

Claimant, specifically "*the amount EUR 180,803.75 euros to club Rosenborg BK as according to the FIFA binding proposal (case number: Ref. nr. TMS 6750)"* and that the amount had been paid "*strictly to the invoice forwarded by Maren Nybrodal with the beneficiary's name 'Rosenborg BallKlub' and successfully wired*", the Respondent therefore stipulated that it believed that there had been a misunderstanding.

9. On 26 February 2021, the Claimant informed the Secretariat that it had not yet received the relevant payment from the Respondent, and further indicated that the Respondent had "*made* [its] *payment to a bank account in Portugal which is not one of the* [Claimant's] *accounts"* and suspected that it "*is a fraud case"*. In this regard, the Claimant stated that in mid-January the Respondent had received an email from one of its employees, a Mrs. Maren Nybrodal, which stipulated that the Claimant had changed its banking information. In this respect, the Claimant submitted that it had "*clear evidence from* [its] *IT systems supplier that* [Mrs. Maren Nybrodal's] *e-mail account* [had] *been hacked, and thus the hackers* [had] *sent erroneous banking information to* [the Respondent]".

10. On 8 March 2021, the Claimant provided the Secretariat with further information and/or documentation in this regard, which can be summarized as follows: -

- The Claimant became aware of the alleged payment of the Respondent on 16 February 2021, when the Respondent had provided the Secretariat with the respective proof of payment following the opening of the present disciplinary proceedings.

- The real Mrs. Maren Mybrodal (*the employee of the Claimant*), never sent an email to the Respondent with the information that the Claimant's bank account had been changed.

- The bank account in Portugal which received the payment from the Respondent, as stipulated within the aforementioned proof of payment provided by the Respondent, is not an account owned by the Claimant.

- In view of the foregoing, the Claimant was never aware of the 'false' emails by means of which the fake details were provided to the Respondent, and was not aware of the transfer of the amount by the Respondent to the account in Portugal until 16 February 2021.

- The Claimant considers it vital proof that on 21 January 2021, *via* TMS it had "*sent a to FIFA Disciplinary with information that the payment was not received*", a request that it would have never had made, if it had indeed received payment of the outstanding amounts.

- Following the transfer of the Player in 2019, the Claimant attempted to contact the Respondent on numerous occasions, and in November 2020 the Respondent "*finally responded"* but still did not make the relevant payment(s).

- The Claimant finds it "*very strange*" that within a week of the Respondent receiving the false email containing the erroneous new bank information, it performed the payment.

- The 'real' banking details of the Claimant were forwarded to the Respondent several times, the last occasion being on 27 January 2021 (*via* TMS). In this respect, the Claimant questions as to why the Respondent did not respond or react to "*to these documents".*

11. On 10 May 2021, the Claimant informed the Secretariat *inter alia* that from its perspective it was still awaiting payment from the Respondent as the payment had not been made to the Claimant's official bank account. The Claimant's official bank account information having been attached in the "*official documents brought forward from FIFA Disciplinary".*

12. On 14 September 2021, the Claimant informed the Secretariat *inter alia* that the Respondent had not yet fulfilled its financial obligations towards it, as it had still not yet received payment of the amounts in question from the Respondent. In this regard, the Claimant considered that "*the fact that* [the Respondent] *made a payment to an erroneous bank account in Portugal must be* [its] *own matter or risk*".

13. On 20 October 2021, the Secretariat provided the Respondent with copies of the Claimant's correspondences dated 8 March 2021 and 14 September 2021, and requested to be provided with (i) the Respondent's comments in this regard; and (ii) the *"relevant **proof of payment** of the total outstanding amount(s) due to the Claimant (duly containing the relevant bank details on which said payment has been made), **along with** the relevant information and/or documentation received from the Claimant with respect to its bank details (i.e. the relevant proof of notification of the applicable bank details by the Claimant to the Respondent, along with the specific bank account details provided by the latter)*" by 26 October 2021 at the latest. Further, the parties were informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 4 November 2021.

II. RESPONDENT'S POSITION

14. On 26 October 2021, the Respondent provided its position, which can be summarized as follows:-

i) Factual background

- On 8 September 2020, the Claimant filed a claim before the FIFA Dispute Resolution Chamber (**DRC**), arguing that the Respondent should pay it solidarity contribution resulting from the transfer of the Player to the Respondent (**the Claim**).

- It is crucial that within the Claim, the Claimant included the following email address for further communications: Maren.Rognhaug.Nybrodal@rbk.no.

- On 24 September 2021, FIFA notified to the parties a proposal for the payment of the solidarity contribution to the Claimant. The proposal (the FIFA Decision) became binding on 12 October 2020.

- On 16 November 2020, the Respondent contacted the email address of Mrs. Maren Nybrodal (*employee of the Claimant*) as stated in the Claim (Maren.Rognhaug.Nybrodal@rbk.no) requesting the issuance of an invoice and the bank details to complete the payment. The Respondent then exchanged several further correspondences with Mrs. Nyobrodal "*for the payment".*

- On 23 December 2020, the Claimant requested the Respondent to complete the payment at the bank account specified therein. Therefore, on the following day, the Respondent requested, and the Claimant provided, an invoice including the bank details.

- Following further extensive correspondences between the parties (always exchanged on the email address of the Claimant - Maren.Rognhaug.Nybrodal@rbk.no), on 15 January 2021, the Claimant provided the Respondent with further details concerning the bank account, including the beneficiary's name and address.

- On 18 January 2021, the Respondent completed the due payment of EUR 180,803.75 to the bank account forwarded by the Claimant first in its email and invoice dated 23-24 December, and then confirmed on 15 January 2021.

- It is a fact that the Respondent and the Claimant had always exchanged correspondences through the email address Maren.Rognhaug.Nybrodal@rbk.no, and that the bank account to which the Respondent paid the solidarity contribution in accordance with the FIFA Decision, had been confirmed on several occasions by such email address.

- However, on 16 February 2021, the Respondent received a letter from the FIFA Disciplinary Committee, informing that the Claimant "*claimed the payment of the solidarity contribution*". In this regard, the Respondent provided the FIFA Disciplinary Committee and the Claimant with the relevant proof of such payment, as well as the previous correspondence(s) between the parties. In this context, the Respondent had requested the closure of the present disciplinary proceedings.

- On 7 June 2021, the Respondent was contacted via email by a Mr. Åsbjørn Vikan, a Police Superintendent from the "*Division for Investigation of Economic and Environmental Crime*" of the "*Trøndelag Police District*". The Superintendent informed the Respondent that the Norwegian police opened an investigation regarding the payment by the Respondent, aimed at discovering the identity of "*the owner of the bank account to which* [the Respondent had] *transferred the money*." The Respondent was not provided with further details. In addition, the Superintendent had requested clarifications and some documentation from the Respondent, to which it had collaborated immediately.

- The Respondent therefore considers that it has fully complied with its obligations in accordance with the FIFA Decision.

ii) Considerations

- Within its correspondence to FIFA dated 14 September 2021, the Claimant argued that "[t]*he fact that Shenzhen made a payment to an erroneous bank account in Portugal must be their own matter or risk*" - this is the only argument brought forward by the Claimant in this case and shall be rejected by the Disciplinary Committee.

- The Respondent considers that this is an attempt by the Claimant to shift the blame to the Respondent for the flaws of its own cybersecurity system.

- The Respondent emphasises that the Claim filed by the Claimant *via* TMS included their official email address for further communications as: Maren.Rognhaug.Nybrodal@rbk.no, such email address corresponding to Ms. Maren Nybrodal (employee of the financial department of the Claimant), and including the official domain of the Claimant (*i.e.*@rbk.no).

- All further correspondences between the parties from November 2020 to January 2021 were exchanged with such email address. The Respondent refers to a two months period, during which more than 20 emails were exchanged.

- The Respondent had contacted the Claimant at such email address, requesting the Claimant's bank details in order to comply with its obligations in accordance with the FIFA Decision. The same Norwegian club, *i.e.* the Claimant, then provided the Respondent with the bank details and invoice with which to complete the relevant payment(s).

- The Respondent complied "*with a legitimate request of payment, accompanied by a proper invoice*". The request came from the same email address used by Claimant to file Claim and then to exchange correspondences with the Respondent over a long period of time.

- It is therefore clear that the Respondent acted with the due diligence required in the circumstances. The Respondent had no objective reason to believe that such email did not corresponded to the Claimant, or that the Claimant would "*incur any problem or fraud to receive the payment".*

- The Respondent is sorry and sympathises with the Clamant, but a cyber-attack to its email address is a clear failure from the Claimant – a failure to protect its own email system from external intruders.

- The Respondent is therefore sufficiently excluded from any liability for failure to comply with the FIFA Decision.

- The Claimant failed to contact the Respondent for approximately four (4) months in order to request any information and/or update about the payments under the FIFA Decision – if it had done so, the Respondent would probably not be involved in the present case.

- In the communication received by the Respondent from the Police Superintendent Mr. Vikan, it is clearly stated that the Claimant requested the Norwegian police to initiate an investigation, with the aim to disclose the owner of the account to which the Respondent had made payment.

- It is therefore clear that the Claimant was aware that its email accounts was/were "hacked" or subject to fraud during the exchange of correspondences with the Respondent. Nevertheless, the Claimant never informed the Respondent beforehand, and only informed the Disciplinary Committee about the failure to comply with the FIFA Decision, claiming some sort of liability of the Respondent.

- In summary, the Respondent cannot be deemed liable for the Claimant's failure to maintain their internal cyber-security system safely from external intrusions. On the contrary, the Respondent reacted with the due diligence required in the circumstances.

- The Claimant shall therefore bear the consequences and initiate any administrative or criminal proceedings before the relevant authorities against the hackers, to which the Respondent remains completely available for any further request in that respect.

- In light of the foregoing, the Respondent requests the confirmation that the Respondent has fulfilled its obligations in accordance with the FIFA Decision, and consequently requests the closure of the present disciplinary proceedings.

15. The Respondent provided supporting documentary evidence with regards to its position as outlined above.

16. The Single Judge once again reiterated that he had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only referred to those observations and evidence for which he considered necessary to explain his reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

17. In view of the circumstances of the present matter, the Single Judge decided to first address the procedural aspects of the present matter, namely, his jurisdiction as well as the applicable law. Secondly, the nature of the FIFA Decision should be discussed before proceeding to the merits of the case and determining the possible failure to comply with the FIFA Decision at hand as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

18. First of all, the Single Judge noted that at no point during the present proceedings did the Respondent challenge his jurisdiction or the applicability of the FIFA Disciplinary Code (**FDC**).

19. Notwithstanding the above and for the sake of good order, the Single Judge found it worthwhile to emphasize that, on the basis of art. 53(2) of the FIFA Statutes, the Single Judge may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

20. Moreover, the Single Judge likewise considered it worthwhile to highlight that, in line with art. 54 (1) (h) FDC, cases involving matters under art. 15 of the aforementioned code may be decided by one member of the Disciplinary Committee alone, acting as a single judge, as in the present case.

B. Applicable legal framework

21. With regard to the matter at hand, the Single Judge pointed out that the disciplinary offense, *i.e*. the potential failure to comply with the FIFA Decision, was committed after the 2019 FDC entered into force. As a result, he deemed that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC.

22. Having established the above, the Single Judge wished to recall the content and scope of art. 15 FDC in order to duly assess the case at hand.

23. According to this provision:

> *1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*
>
> *a) will be fined for failing to comply with a decision; in addition:*
> *b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
> *c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*
>
> *(…)*
>
> *3. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*

24. The above being outlined, the Single Judge emphasized that, equal to the competence of any enforcement authority, he cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable.

25. His jurisdiction being established and the applicable law determined, the Single Judge subsequently turned his attention to the FIFA Decision.

C. Nature of the Proposal from the FIFA Administration

26. The Single Judge observed that the present disciplinary proceedings concerned the enforcement of a proposal from the FIFA Administration that became binding on the parties on 12 October 2020.

27. In this regard, the Single Judge noted that this proposal was made by the FIFA Administration in accordance with art. 13 of the Procedural Rules and FIFA Circular 1689.

28. This provision provides that in disputes relating to training compensation and solidarity mechanism without complex factual or legal issues, the FIFA Administration is entitled to make a written proposal to the parties regarding the amounts owed and the calculation of these amounts. It is further stated that, upon receipt of FIFA's proposal, the parties have 15 days to request, in writing, a formal decision from the competent decision-making body. Moreover, a failure to request a formal decision, *i.e.* to reject FIFA's proposal, will result in the proposal being regarded as accepted by all the parties and binding on them.

29. In addition, the aforementioned principles were reflected in FIFA Circular 1689 of 21 August 2019, which expressly provided that should none of the parties reject the proposal from the FIFA Administration within 15 days of its notification via TMS, the proposal would become binding on the parties.

30. Against this background, the Single Judge held that the aforementioned provision and circular solely provide that the proposal would become binding on the parties in the event that neither of them request of formal decision, without however determining the nature of that "binding" proposal and its effects.

31. In this regard, the Single Judge turned his attention to a CAS award which had already addressed the characterization of a binding proposal as a decision (in the form of a confirmation letter). In this respect, whilst proposals themselves cannot be considered as a final and binding decision, a 'confirmation letter' - the communication by means of which the relevant parties are informed that a proposal of FIFA has become binding in keeping with the above - such as the FIFA Decision in the present case, may be considered as a decision[1].

1 CAS 2020/A/7252.

32. In particular, it was emphasized that the following elements present in a 'confirmation letter' (as opposed to a proposal only), lead to the conclusion that the latter is a decision which "*definitely affects the legal position of the parties involved*"[2]:

- It confirms that the relevant proposal was binding either in case it was accepted by all parties or if the parties failed to provide an answer;
- It confirms that the applicable proposal had become binding;
- It confirms the amount owed by the Respondent party to the Claimant party (whereas the applicable proposal only refers to a proposed amount which could still be objected to);
- It provides a grace period for payment;
- It determines that an interest rate would have to be paid over the due amount as soon as the grace period had elapsed;
- The matter may be referred to the FIFA Disciplinary Committee if the amounts due by the Respondent are not paid to the Claimant within the grace period;

33. In view of the above, the Single Judge considered it evident that the correspondence sent by the FIFA Administration on 12 October 2020 (*i.e.* the FIFA Decision) was to be regarded as a decision since it satisfied the aforementioned elements. Consequently, as the FIFA Decision materially and definitely affected the legal position of the parties, it was therefore enforceable before the competent authority.

34. Indeed, the Single Judge further wished to emphasise that the foregoing conclusion that the correspondence sent by the FIFA Administration on 12 October 2020 is to be regarded as a decision, is in keeping with the standing practice of FIFA as confirmed by CAS[3]. Such view being reinforced by art. 13 (3) of the FIFA Procedural Rules (2021 edition), which, whilst not being the edition applicable to the matter at hand, has codified the practice that a 'confirmation letter' shall be considered as final and binding decision.

35. The nature of FIFA's proposal being determined, the Single Judge then turned to the possible non-compliance of the Respondent with the FIFA Decision.

D. Merits of the dispute

I. Analysis of the facts in light of art. 15 FDC

36. The above having been established, the Single Judge noted that on 12 October 2020 the parties were duly informed that the proposal issued by the FIFA Administration on 24 September 2020 had become binding in accordance with art. 13 of the Procedural Rules and FIFA Circular 1689. Moreover, the Single Judge recalled that the former has the characteristics of a decision, which can therefore be enforced.

[2] CAS 2020/A/7252.
[3] Ibid.

37. In view of what has been explained *supra*, the Single Judge is not allowed to analyze the FIFA Decision as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyze if the Respondent has complied with the binding proposal from the FIFA Administration.

38. In this respect, the Single Judge remarked from the circumstances of the case, but also from the arguments raised by the Respondent, that the heart of the matter in the present case constitutes the fact that the Respondent made an incorrect payment to the Claimant in accordance with the FIFA Decision to a bank account belonging to a third party, as a result of the Claimant's email(s) having been subject to an alleged hacking/fraud. Consequently, it appears that said third-party incorrectly received payment from the Respondent, as opposed to the Claimant itself.

39. In this regard, the Single Judge observed that on 23 December 2020, 24 December 2020 and 15 January 2021 respectively, the Respondent had received emails from the address Maren.Rognhaug.Nybrodal@rbk.no – an address with which the Respondent can be seen to have previously exchanged multiple emails with the Claimant, and which indeed was the exact email address expressly stipulated by the Claimant as its point of contact in relation to the Claim – informing that the bank details for payment of the outstanding amounts due by the Respondent had been changed (now corresponding to an account with a bank address based in Portugal – **the Portuguese account**), an updated invoice thereby being provided to the Respondent, followed by further clarifications regarding the (Portuguese) account details.

40. In continuation, the Single Judge remarked that on 18 January 2021 the Respondent had, in light of the FIFA Decision, executed a payment of EUR 180,803.75 to the Portuguese account, the former providing proof of payment in this regard.

41. This being established, the Single Judge highlighted that it was not challenged that the Respondent had indeed executed a payment to the Portuguese account, the arguments of the parties rather pertaining to as to whether the aforementioned payment was executed in good judgement, and indeed, as to which of the respective parties is at fault and/or responsible for the payment having been executed to the incorrect bank account as a result of the abovementioned hacking/fraud.

42. This being the case, the Single Judge considered that the principle issue for his assessment in the proceedings at hand was, in light of the circumstances of the present matter, whether or not the Respondent can be deemed to have complied with the FIFA Decision by way of its execution of the payment to the Portuguese account, and following, whether or not it can therefore be considered as a non-compliant party within the meaning of art. 15 FDC.

43. The above being established, the Single Judge acknowledged the submissions of the Respondent concerning:

    i. The Claim filed in TMS by the Claimant included the email address Maren.Rognhaug.Nybrodal@rbk.no as its official address for further communications.

ii. The bank details and invoice to which the Respondent eventually made payment were provided to it by communication(s) from the email address Maren.Rognhaug.Nybrodal@rbk.no.

iii. The email address Maren.Rognhaug.Nybrodal@rbk.no, had been used by the Claimant to file the Claim and also to communicate with the Respondent over a lengthy period of time.

iv. The Respondent acted with the due diligence required in the circumstances, and had no objective reason to believe that such email did not correspond to the Claimant, or that the Claimant would incur any issues receiving the payment.

v. A cyber-attack to its email address is a clear failure from the Claimant to protect its own email system and it should bear the consequences.

vi. On 18 January 2021, the Respondent completed the due payment of EUR 180,803.75 to the bank account forwarded by the Claimant first in its email and invoice dated 23-24 December, and then confirmed on 15 January 2021.

vii. The Respondent therefore considers that it has fully complied with its obligations in accordance with the FIFA Decision.

44. Further, the Single Judge took into account the following submissions of the Claimant:

i. That the real Mrs. Maren Nybrodal, an employee of the Claimant and owner of the email address Maren.Rognhaug.Nybrodal@rbk.no, had never sent an email to the Respondent with the information that the Claimant's bank account had been changed.

ii. The bank account in Portugal which received the payment from the Respondent, as stipulated within the proof of payment provided by the Respondent, is not an account owned by the Claimant.

iii. The Claimants contends to have clear evidence from its IT systems suppliers that the email account of Mr. Maren Nybrodal, Maren.Rognhaug.Nybrodal@rbk.no, had been hacked, and thus it appears that the hackers had sent the erroneous banking information to the Respondent.

iv. The 'real' bank details of the Claimant had been provided to the Respondent on multiple occasions, to which the Respondent did not respond.

45. Against such background and taking into account the above, the Single Judge began by pointing out that it follows from Swiss law that, in cases of wrong payments, a debtor is not to be discharged from its payment obligations unless it can be seen that the debtor paid to the wrong person as a result of the contributory negligence of the creditor party – the former having likewise been stipulated by the Court of Arbitration for Sport (**CAS**) in its Award regarding a very similar issue, *CAS 2020/A/6784*. In this respect, the Single Judge emphasized that pursuant to art. 41 of

the Swiss Code of Obligations (**SCO**), read in conjunction with art. 99(3) SCO, the party which had caused the damage to the other party, whether willfully or by negligence, shall be the party to compensate it. This being said, at the same time, the Single Judge also underlined that pursuant to art. 44 SCO (*free English translation*) "[w]*here the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely*".

46. With the foregoing in mind, the Single Judge next found it prudent to recount the relevant case law before the Swiss Federal Tribunal (**SFT**) (see *SFT 05.12.2016 – 4A_386/2016*), pursuant to which it has been clarified that victims of cyber-attacks by malicious third parties are not necessarily presumed, without further investigations, to have conducted themselves with a lack of diligence, in other words, the fact that the Claimant may have insufficiently secured its emails does not automatically lead to the conclusion that there was negligence on the part of the latter, and rather requires an assessment of the circumstances and evidence at stake.

47. Against such framework, the Single Judge proceeded to carefully analyse the entirety of the evidence at his disposal and noted that:

    (i) the "fake" invoice provided to the Respondent (and to which it made payment) was communicated with an email address which clearly belonged to the Claimant (Maren.Rognhaug.Nybrodal@rbk.no),

    (ii) the "fake" invoice, for all intents and purposes, reasonably appeared – from an objective perspective – to have corresponded to an account of the Claimant, though acknowledging that the "fake" details denoted a bank address in Portugal, and

    (iii) the email Maren.Rognhaug.Nybrodal@rbk.no had expressly been indicated by the Claimant as its point of contact in relation to the Claim and had prior to the communication of the 'false invoice', exchanged 'valid' (*i.e.* communications not sent as a result of an alleged hacking/fraud) emails with the Respondent in relation to the present case.

48. In view of the foregoing, the Single Judge therefore deemed it clear that the Respondent had made payment of the relevant amount to an account which it reasonably considered, albeit incorrectly, to have belonged to the Claimant. The Respondent cannot be considered to have been negligent in this respect, as the correspondences exchanged between the Respondent and the Claimant by means of which the "fake" bank details of the Claimant were provided to the Respondent, came from the official email of the Claimant – noting in particular, that the Respondent was expressly directed to communicate with such email (Maren.Rognhaug.Nybrodal@rbk.no), in the context of the Claim giving rise to the present disciplinary proceedings.

49. The above being established, the Single Judge recalled the aforementioned provisions of Swiss law, the jurisprudence of the CAS and case law of the SFT, and remarked that whilst the fact that the emails of the Claimant may have been subject to a cyber-attack/hacking does not, in and of

itself, equate to negligence on the part of the former, it remained that the Claimant had failed to notice the "fake" correspondences sent to the Respondent, in particular that which informed of the fake account for payment (in addition to the corresponding replies to such communications from the Respondent) prior to the opening of the present disciplinary proceedings on 16 February 2021 – this being despite such communications having been exchanged on the Claimant's own email address - Maren.Rognhaug.Nybrodal@rbk.no - the Claimant itself having admitted that it was never previously aware of the 'false' emails by means of which the fake details were provided to the Respondent.

50. With the foregoing evaluations in mind, the Single Judge took into account once more the respective conduct of the parties and deemed that, in light of the elements as outlined above, the Respondent - by way of its execution of the payment to the "fake account" - had conducted itself in good faith, and in keeping with art. 2 of the Swiss Civil Code[4] . In particular, the Single Judge emphasised in this respect that (i) the Respondent had no good cause to believe that the account provided to it did not belong to the Claimant - the latter at no point indicating that any correspondence(s) received from its appointed address (Maren.Rognhaug.Nybrodal@rbk.no) might be disingenuous, and, (ii) that the "fake" emails themselves demonstrated no obvious characteristics which in all reasonableness may have alerted the Respondent to their fraudulent nature.

51. As a result, and in light of the foregoing evaluations, the Single Judge concluded that based on the information and documentation at his disposal, the Respondent, by way of its payment in good faith to an account which it reasonably considered to have belonged to the Claimant, can be established to have fulfilled its obligations in accordance with the binding proposal from the FIFA Administration, and therefore cannot be considered as a non-compliant party within the meaning of art. 15 FDC.

52. In view of the foregoing, the Single Judge concluded that all charges against the Respondent must be dismissed, as the Respondent cannot be considered as a non-compliant party within the meaning of art. 15 FDC, and therefore, cannot be subject to the obligations laid down under said article.

[4] Art. 2 Swiss Civil Code – *"[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith*"

IV. DECISION OF THE DISCIPLINARY COMMITTEE

To close the disciplinary proceedings opened against Shenzhen FC.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Mr. Jorge Ivan Palacio
Chairman of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 64 par. 5 of the FDC and art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.