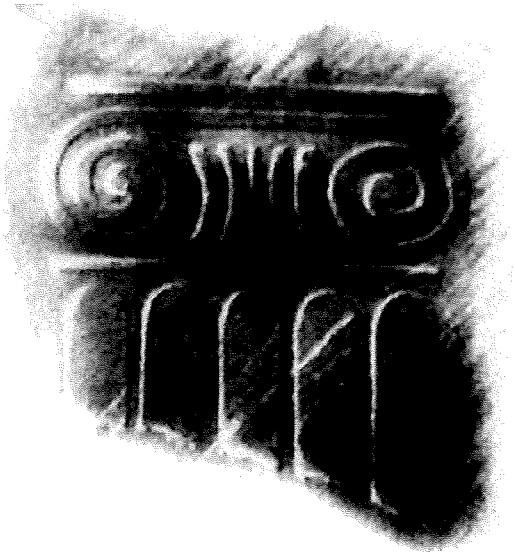
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Chennai City FC, India

v.

Sandro Rodriguez Rodríguez Felipe, Spain
Adolfo Miranda Araujo, Spain
Roberto Eslava Eslava Suárez, Spain

&

Fédération Internationale de Football Association, Switzerland

CAS 2020/A/7495 – CAS 2020/A/7496 – CAS 2020/A/7497

Lausanne, October 2023

CAS 2020/A/7495 Chennai City FC v. Sandro Rodríguez Felipe & Fédération Internationale de Football Association (FIFA)

CAS 2020/A/7496 Chennai City FC v. Adolfo Miranda Araujo & Fédération Internationale de Football Association (FIFA)

CAS 2020/A/7497 Chennai City FC v. Roberto Eslava Suárez & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Jacopo Tognon, Attorney-at-law in Padua, Italy

Arbitrators: Prof Petros C. Mavroidis, Professor in New York, USA

Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal

in the arbitration between

Chennai City FC, Chennai, Tamil Nandu, India

Represented by Mr Markus Prazeller and Mr David Hug, Attorneys-at-law in Basel, Switzerland

- Appellant in CAS 2020/A/7495 to 7497 -

and

Mr Sandro Rodríguez Felipe, Tenerife, Spain

Represented by Mr Juan de Dios Crespo Pérez and Mr Alfonso León Lleò, Attorneys-at-law in Valencia, Spain

- First Respondent in CAS 2020/A/7495 -

and

Mr Adolfo Miranda Araujo, Barcelona, Spain

Represented by Mr Juan de Dios Crespo Pérez and Mr Alfonso León Lleò, Attorneys-at-law in Valencia, Spain

- First Respondent in CAS 2020/A/7496 -

Mr Roberto Eslava Suárez, Telde, Spain

Represented by Mr Juan de Dios Crespo Pérez and Mr Alfonso León Lleò, Attorneys-at-law in Valencia, Spain

- First Respondent in CAS 2020/A/7497 -

and

Fédération Internationale de Football Association, Zurich, Switzerland

- Second Respondent in CAS 2020/A/7495 to 7497 -

*****

I. PARTIES

1. Chennai City FC (the "Appellant" or "Chennai FC" or the "Club") is an Indian football club affiliated with the All India Football Federation (the "AIFF").

2. Mr Sandro Rodríguez Felipe (the "First Respondent in case CAS 2020/A/7495" or "Mr Rodríguez Felipe" or "Player 1") is a Spanish professional football player born on 26 May 1990.

3. Mr Adolfo Miranda Araujo (the "First Respondent in case CAS 2020/A/7496" or "Mr Miranda Araujo" or "Player 2") is a Spanish professional football player born on 14 October 1989.

4. Mr Roberto Eslava Suárez (the "First Respondent in case CAS 2020/A/7497" or "Mr Eslava Suárez" or "Player 3") is a Spanish professional football player born on 22 January 1988.

5. The *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is the international governing body of football, based in Zurich, Switzerland.

6. Mr Rodríguez Felipe, Mr Miranda Araujo and Mr Eslava Suárez shall hereinafter be jointly referred to as the "First Respondents" or the "Players".

7. The First Respondents and the Second Respondent shall be jointly referred to as the "Respondents", where applicable.

8. The Appellant and the Respondents shall hereinafter be jointly referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

A. Background Facts

9. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations.[1] Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence it considers necessary to explain its reasoning.

10. On 27 May 2019, 1 July 2019 and 18 July 2019, Mr Rodríguez Felipe, Mr Miranda Araujo and Mr Eslava Suárez respectively each signed an employment contract with Chennai FC valid as of the date of signature until 30 June 2021 (the "Employment Contracts").

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of procedural economy, they are not all identified with a "[sic]".

11. Clause 17 of the Employment Contracts ("Force Majeure") states the following:

> *"Subject to the other provisions of this Agreement, the failure by a party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability arises from an event of Force Majeure, provided that the party affected by that event has taken reasonable precautions, has duly communicated the occurrence of the event to the other party, and has taken due care and attempted to mitigate the consequences of such event, all with the objective of carrying out the terms of this Agreement without delay. For the purpose of this Agreement, "FORCE MAJEURE" means an event or circumstance which is beyond the reasonable control of a party and which makes a party's performance of its obligations impossible and includes but is not limited to wars, acts of terrorism, civil unrest, hostilities, public disorder, epidemics, fires, Acts of God, Court Orders or Governmental restrictions and actions and decisions of regulatory and sports authorities".*

12. Clause 19 of the Employment Contracts (which addresses Applicable Laws and Dispute Resolution) reads the following:

> *"19.4 All disputes relating to termination shall be referred to the AIFF Player Status Committee for adjudication directly without undergoing the process of good faith negotiations and mediations referred to in Clause 19.2 and 19.3 unless both the Player and the Club mutually decide otherwise.*
>
> *19.5 At any stage of the good faith negotiation process or the mediation process referred in Clause 19.3 and 19.4 both the Player and Club can mutually agree to refer the matter to the AIFF Player Status Committee for an urgent decision and, in such circumstances the requirement for the 10 day windows for good faith negotiations and mediation under Clause 19.3 and 19.4 will not apply.*
>
> *19.6 If the dispute is not within the jurisdiction of scope of the AIFF Player Status Committee then it shall be referred to arbitration under a sole arbitrator appointed by mutual consent under the provisions of the Arbitration and Conciliation Act 1996 or any modification thereof then in effect. The Arbitration shall be in English and the seat and venue of Arbitration shall be Chennai. Subject to the above, the Courts in Chennai shall have sole and exclusive jurisdiction in respect of all matters addressed under the Clause 19.6."*

13. On 29 March 2020, Chennai FC sent a letter to Mr Rodríguez Felipe, Mr Miranda Araujo and Mr Eslava Suárez respectively, terminating the Employment Contracts and invoking force majeure due to the COVID-19 pandemic, stating the following:

> *"We are writing to you to formally declare a Force Majeure event due to the Covid-19 pandemic, Government enforced restrictions and the decisions of the Regulatory and Sport Authorities. As you are aware the football league in India as well as all international events have been suspended. The Government has also ordered the closure of all sporting events and banned the use of stadiums in India.*

There is express provision for this type of event in your agreement with the Club (under Clause 17). It is clear that these events are neither the fault of the Club or the players and are due to events which are beyond anyone's control.

We have been advised by the Tamil Nadu Government and the Sports Development Authority to send all foreign players and staff safely back to their respective countries and to confirm their departure.

It is therefore with great regret and sadness that the Club has no alternative but to terminate your agreement with the Club with immediate effect through this declaration of Force Majeure. We will ensure that the fee payable for December 2019 and January and February 2020, will be paid by 31st of July 2020 or at the time when the situation gets normal whichever is later. We will keep you updated when those payments have been made [...]."

14. On 31 March 2020, the First Respondents sent a letter to Chennai FC rejecting the invocation of force majeure, indicating that the Club had unlawfully terminated the Employment Contracts and offered a 10-day deadline to "*find an amicable solution*" to the matter of termination as well as to the outstanding salaries.

15. On 1 April 2020, the Club replied to the First Respondents and reiterated the force majeure event, stating that "*it is not an option for the Players to reject the termination*", and that it "*will arrange to pay the Player's salary by end of April at the latest, subject to the local banking facilities being fully operational at that time*".

16. On 6 April 2020, the First Respondents wrote back to the Club, stating that "*in any case, as you are well-aware, the employment contracts of the Players expire at the soonest on the 31st of August 2020 for Mr. Garcia (i.e. within approximately five months still) and the ones of the remaining Players on the 30th of June 2021. As a result thereof, terminating prematurely all these employment contracts on the 29th of March 2020 was clearly without just cau*se. *The fact that your Club still owes substantial payments to the Players, which were due long before said current COVID-19 related circumstances, being the Players threatened by your Club on the fact that the accommodation where they are compelled to be confined is not being covered by the Club despite the clear wording of the Employment Contracts, clearly violates all their rights under the FIFA RSTP and entails a deceitful abuse of the FIFA Paper related to COVID-19 circumstances*".

B. Proceedings before the FIFA Dispute Resolution Chamber

17. On 13 May 2020, Mr Rodríguez Felipe, Mr Miranda Araujo and Mr Eslava Suárez respectively each lodged a claim each before FIFA against the Club, demanding outstanding remuneration and compensation for breach of contract.

18. On 4 June 2020, the Club raised its objection to the competence of the FIFA Dispute Resolution Chamber ("FIFA DRC"), claiming that the matter at stake should have been referred to the AIFF Players' Status Committee (the "AIFF PSC"). The three Players also referred to the FIFA COVID-19 Guidelines and stated that parties should solve

their "*differences*" "*at a national level*". The Club also asked for the rejection of all of the claims of the Players.

19. On 20 July 2020, the FIFA DRC issued the operative part of three separate decisions (one for each claim) stating that the respective claims of the three Players were admissible and partially accepted (the "Appealed Decisions). According to the Appealed Decisions, the Club shall pay the following amounts

To Player 2:

> *"- USD 3,500 as outstanding remuneration plus 5% interest p.a. as from 10 January 2020 until the date of effective payment;*
>
> *- USD 7,000 as outstanding remuneration plus 5% interest p.a. as from 1 February 2020 until the date of effective payment;*
>
> *USD 7,000 as outstanding remuneration plus 5% interest p.a. as from 1 March 2020 until the date of effective payment;*
>
> *- USD 7,000 as outstanding remuneration plus 5% interest p.a. as from 1 April 2020 until the date of effective payment;*
>
> *- USD 105,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 13 May 2020 until the date of effective payment. [...]"*

To Players 1 and 3 each:

> *"- USD 6,500 net as outstanding remuneration plus 5% interest p.a. as from 10 January 2020 until the date of effective payment;*
>
> *- USD 6,500 net as outstanding remuneration plus 5% interest p.a. as from 1 February 2020 until the date of effective payment;*
>
> *USD 6,500 net as outstanding remuneration plus 5% interest p.a. as from 1 March 2020 until the date of effective payment;*
>
> *- USD 6,500 net as outstanding remuneration plus 5% interest p.a. as from 1 April 2020 until the date of effective payment;*
>
> *- USD 97,500 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 13 May 2020 until the date of effective payment. [...]."*

20. The Appealed Decisions also provided that if the Club did not pay the amount due plus interest, within 45 days as from the notification by the three Players of the relevant bank details to the Club, the following consequences shall apply:

"The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".

21. On 12 October 2020, the motivated version of each Appealed Decision was then notified to the Parties. A summary of the FIFA DRC's reasoning is as follows:

- The unilateral termination of the Employment Contracts by the Club on 29 March 2020 was allegedly based on the COVID-19 pandemic. However, according to FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQs, FIFA did not declare that the COVID-19 outbreak constituted a force majeure situation in any specific country or situation. Therefore, it was a matter to be assessed on a case-by-case basis. The FIFA DRC concluded that there is no evidence showing that the Club took more lenient measures – compared to a premature termination of an employment contract – or attempted to mitigate the damages for the First Respondents. Moreover, the Club did not fulfil its financial obligations towards the First Respondents even prior to the outbreak of the pandemic, as the Club failed to pay the First Respondents between December 2019 and March 2020. Hence, the Club unilaterally terminated the Employment Contracts with the First Respondents without just cause.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The Written Proceedings

22. On 2 November 2020, Chennai FC filed three Statements of Appeal against the Appealed Decisions before the Court of Arbitration for Sport ("CAS") against Mr Rodríguez Felipe and FIFA (CAS 2020/A/7495), Mr Miranda Araujo and FIFA (CAS 2020/A/7496) and Mr Eslava Suárez and FIFA (CAS 2020/A/7497) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). In its Statements of Appeal, the Appellant proposed that the disputes be jointly referred to a sole arbitrator, but indicated that if the disputes were ultimately submitted to a panel of three arbitrators, that it nominated as arbitrator Mr Petros C. Mavroidis, Professor at Columbia Law School, New York City, New York, USA.

23. On 12 November 2020, in accordance with Article R51 of the CAS Code, the Club filed three Appeals Brief (one for each Appealed Decision).

24. On 16 November 2020, the First Respondents requested the appointment of a panel of three arbitrators and stated they did not agree that the disputes be referred to the same panel or sole arbitrator further to Article R50 of the CAS Code, while the Second

Respondent on the same date indicated that it agreed that the dispute be referred to the same sole arbitrator further to Article R50 of the CAS Code. All the Respondents also requested that their deadline to file their Answers be set after the Appellant had paid the advance of costs, further to Article R55 of the CAS Code.

25. On 23 November 2020, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided to refer these proceedings to the same panel of three arbitrators further to Article R50 of the CAS Code.

26. On 25 November 2020, the Second Respondent requested to be removed as a Respondent in these proceedings.

27. On 2 December 2020, the Appellant informed the CAS Court Office that it did not agree to remove FIFA as a Respondent. Accordingly, FIFA was maintained as a Respondent.

28. On 17 December 2020, after the proceedings were briefly suspended further to the Parties' agreement, the CAS Court Office was informed that the Respondents jointly nominated as arbitrator in these proceedings Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal.

29. On 30 December 2020, the CAS Court Office informed the Respondents that the Appellant had paid its share of the advance of costs and reset the Respondents' Answer deadline further to Article R55 of the CAS Code.

30. On 5 January 2021, the Parties were provided with a disclosure made by Mr Nogueira Da Rocha further to Article R33 of the CAS Code, which none of the Parties subsequently challenged further to Article R34 of the CAS Code.

31. On 3 February 2021, the CAS Court Office informed the Parties on behalf of the Deputy President of the CAS Appeals Arbitration Division and further to Articles R50 and R54 of the CAS Code that the Panel appointed to decide these cases was constituted as follows:

President:	Mr Jacopo Tognon, Attorney-at-law in Padova, Italy
Arbitrators:	Prof Petros C. Mavroidis, Professor in New York, USA
	Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal

32. On 29 January 2021, after having been granted an extension, the Second Respondent filed its Answer further to Article R55 of the CAS Code.

33. On 2 February 2021, after having been granted extensions, the First Respondents filed their respective Answers further to Article R55 of the CAS Code.

34. On 4 March 2021, after consulting the Parties, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present proceeding, and that it would be held by videoconference further to Articles R44.2 and R57 of the CAS Code. Due to the indicated number of witnesses, the Panel reserved two days for the hearing.

35. On the same date, the CAS Court Office informed the Parties that – with reference to inter alia the CAS Court Office letters dated 15 February 2021, 19 February 2021 and 25 February 2021 concerning the First Respondents' procedural request in their Answers that "*the Panel [...] order Chennai FC to produce all tax certificates and proof of taxes having been paid for all salaries of the Player during the full period of the contractual relationship between the parties*" – the Panel, after having considered the Parties' respective positions in this respect and pursuant to Article R44.3 of the CAS Code, ordered the Appellant to produce to the CAS Court Office by 11 March 2021 "*all tax certificates and proof of taxes having been paid for all salaries of the Player during the full period of the contractual relationship between the parties*".

36. On 23 March 2021, the CAS Court Office acknowledged receipt of the Parties' respective availabilities and noted that all of the Parties were available for the hearing on 7 and 8 June 2021. Therefore, the Parties were informed that a hearing would be held over two days – on Wednesday, 7 June 2021 and Thursday, 8 June 2021 – by video-conference.

37. On 25 May 2021, FIFA sent the signed Order of Procedure to the CAS Court Office.

38. On 26 March 2021, the CAS Court Office acknowledged receipt of the Appellant's email and letter of 25 March 2021, enclosing the tax documents requested to be produced in the CAS Court Office letter dated 4 March 2021.

39. On 2 June 2021, the Appellant and the First Respondents sent the signed Order of Procedure to the CAS Court Office.

B. The Hearing

40. The hearing was held on 7 June 2021 via videoconference (as the second scheduled day of 8 June 2021 ultimately was not needed). Attending – in addition to the Panel and Ms Kendra Magraw, CAS Counsel – were the following:

- On behalf of the Appellant:
  - Mr Rohit Ramesh, President and Owner of the Club
  - Mr Krishnakumar Raghavan, Director – Operations
  - Mr Markus Prazeller, Legal Representative
  - Mr David Hug, Legal Representative
- On behalf of the First Respondents:
  - Mr Sandro Rodríguez Felipe, First Respondent in CAS 2020/A/7495
  - Mr Adolfo Miranda, First Respondent in CAS 2020/A/7496
  - Mr Roberto Eslava, First Respondent in CAS 2020/A/7497
  - Mr Juan de Dios Crespo, Counsel
  - Mr Gytis Račkauskas, Counsel
  - Mr Alfonso León, Counsel
  - Mr Nauzet Garcia Santana, Counsel

- Mr Sandra Fennou, Interpreter

o On behalf of FIFA:

- Mr Miguel Liétard Fernández-Palacios, Director of Litigation
- Ms Marta Ruiz-Ayucar, Senior Legal Counsel

41. At the opening of the hearing, the Parties confirmed that they had no objections regarding the composition of the Panel. During the hearing, the Parties made submissions in support of their respective cases.

42. The Panel heard the testimony of Mr Rohit Ramesh – the Club's President – who highlighted that the lockdown in India was imposed from 24 March 2020 for 21 days in row. The situation of the Club was dire and worsened since no revenue at all was received by the Club.

43. Mr Ramesh pinpointed that the main source of income for the Club were sponsors, the AIFF, etc. Moreover, the Club lost the money it usually derived from the transfer of players. Therefore, the Club had to cut all costs to avoid bankruptcy.

44. Thus, the Club's President underlined that terminating the Players' Contracts was the only viable solution.

45. Mr Ramesh stated that the Players were hosted in a 4-star hotel, while also making efforts to help them to get back to Spain. He stated that the Club had to sustain substantial expenses to protect the safety of the Players.

46. Mr Raghavan – witness to the Appellant – emphasised the severity of the COVID-19 consequences in India. He explained that he was tasked with keeping the players safe and returning them to their country of origin. Since the financial situation of the Club in March 2020 was extremely difficult, it was decided to close all of the offices and suspend all expenditures (players' salaries included).

47. Mr Raghavan stated that financial constraints were the reason why they terminated the Employment Contracts. He had to support the Players in getting back to Spain and finding new employers.

48. He confirmed that Indian players had not been paid from April 2020 to December 2020. The non-payment of the salaries amounted to approximately a 75% reduction of the Club's revenue. The Employment Contracts become unsustainable, and their termination was entirely due to the COVID-19 outbreak.

49. Mr Raghavan stated that the final intention of the Club was to call the Players back when and if the season would have resumed. However, the 2019/2020 football season terminated without a formal conclusion and only lasted for 3 months. Hence, all the foreign players' contracts were terminated. Only the contracts with the domestic players (approximately17/34 of the roster spots) were resumed.

50. Mr Nauzat Garcia Santana – witness to the First Respondents – claimed that he had a similar case to the one at stake, where he won, and the Club did not lodge a complaint before CAS afterwards.

51. Mr Santana brought forward that he has had a very bad experience with the Club, which besides not paying the players, also did not collaborate to find any solution, nor get them back to play. He also confirmed to have a connection with the Players.

52. Finally, Mr Santana explained that an "ETRO" is a document that the Club must pay for in order for a player to leave the country.

53. Mr Miranda Araujo – i.e. Player 2 – gave a Party statement declaring that he did not have any legal help from either lawyers or intermediaries to understand the content of his Employment Contract. He stated that the Players were not offered any sort of proposals to solve the matter.

54. Mr Miranda Araujo highlighted how the Players never received any money.

55. Mr Miranda Araujo stated that he has signed with a new team, Atletico Baleares, which plays in the second division in Spain, where he has been receiving a gross salary of EUR 4,500 plus EUR 1,000 of fees. He claimed that – to the best of his knowledge – Mr Eslava Suárez plays in the fourth Spanish division, while Mr Rodríguez Felipe never found another club.

56. Player 2 stated that there was a delay in the obtainment of the document to fly back to Spain – the so-called ETRO. Indeed, the Players had the opportunity to leave India for Spain only after two months from the termination of the Employment Contracts. He stated he did not remember the exact date of their return to Spain.

57. 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.

C. Post-Hearing Submissions

58. By letter dated 7 June 2021, the Panel asked the First Respondents to submit copies of the employment contracts they had signed with other clubs after the Club terminated their respective Employment Contract.

59. On 18 June 2021, the employment contracts were submitted by the First Respondents.

60. On 28 June 2021, the Club and the Second Respondents commented on the employment contracts.

61. By letter dated 5 August 2021, the Panel asked the Parties to comment on the minimum procedural standards set forth by FIFA Circular No. 1010.

62. On 26 August 2021, the Club sent its comments on FIFA Circular No. 1010.

63. On 16 September 2021, the First Respondents and the Second Respondents lodged their respective comments on FIFA Circular No. 1010.

IV. SUBMISSIONS OF THE PARTIES

64. The following outline is a summary of the Parties' arguments and submissions that the Panel considers relevant to decide the present dispute and does not necessarily comprise each contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions during the hearing, documentary evidence and the content of the Appealed Decisions were all taken into consideration.

A. The Appellant's submissions

65. Chennai City FC's arguments can be summarised as follows:

66. The Appellant submits that on 14 March 2020, the AIFF announced that all professional amateur football leagues would remain suspended from 15 March 2020 until 21 April 2020 due to the issuance of advisories by the Ministry of Health & Family Welfare, Government of India and some directives issued by various State Governments.

67. The Appellant highlights that on 24 March 2020, the Indian Government ordered a nationwide lockdown for 21 days, limiting the movement of the entire Indian population, as a preventive measure against the COVID-19 pandemic.

68. The Appellant also underlines that on 21 April 2020, the AIFF Executive Committee announced that the I-League shall be considered concluded and the remaining matches cancelled.

69. The new restrictions had an impact on international transactions. According to the Appellant, it was not possible *"under the local banking rules to make an overseas payment using on-line facilities"*. Therefore, the wage payments to the Players could not go forward and this issue had been transparently communicated to the Players.

70. The Appellant submits that on 29 May 2020, the AIFF issued a media release stating that all football activities remained suspended and issued a circular entitled "COVID-19 Football Regulatory Issues in India" ("AIFF COVID-19 Circular") setting forth guidelines and recommendations dealing with practical issues arising from the pandemic on football related matters. Particularly, the AIFF COVID-19 Circular addressed player contracts and the transfer system.

71. The Appellant claims that there were several conversations between the Club and the players of Chennai City FC. As a result, the Appellant submits it wrote to the First Respondents in a "Declaration of Force Majeure due to COVID 19 Pandemic" as follows:

"We are writing to formally declare a Force Majeure event due to the Covid-19 pandemic, Government enforced restrictions and the decisions of the regulatory and sports authorities. As you are aware the football league in India as well as all international events have been suspended. The Government has also ordered the closure of all sporting events and banned stadium in India.

There is express provision for this type of event in your agreement with the Club (under Clause 17). It is clear that these events are neither the fault of the Club or the players and are due to events which are beyond anyone's control.

We have been advised by the Tamil Nadu Government and the Sports Development Authority to send all foreign players and staff safely back to their respective countries and to confirm their departure.

It is therefore with great regret and sadness that the Club has no alternative but to terminate your agreement with the Club with immediate effect through this declaration of Force Majeure. We will ensure that the fees payable for January and February will be paid by 31 July 2020 at the latest and we will keep you updated when those payments have been made.

Your safety and security are very important to us and we are committed to ensure your safe passage to your respective countries. Also, the EFRRO procedures will be taken care by the Club. We hope that when the pandemic is over and the restrictions are lifted then we will be able to resume our participation in the league and other tournaments. We will keep you informed and contact you again if we were able to offer you a new contract.

[...]".

72. The Appellant also submits that on 29 March 2020, an email was sent out to each of the Players informing them that *"all efforts had been made to find a satisfactory solution for all parties involved"*. According to the Appellant, the email wording emphasised that the measure was temporary: "*If your services are needed once things get back to normal, we will get in touch with you*".

73. However, the Appellant submits that both prior to its Declaration of Force Majeure and afterwards, it continuously complied with its duties towards the Players, especially supporting the potential exit of the Players from the country.

74. The Appellant subsequently contested the jurisdiction of the FIFA DRC regarding the claims submitted by the Players against the Club on 13 May 2020, with reference to the clause contained in the Employment Contracts.

75. On 12 October 2020, after having partially accepted the Players' claims, the FIFA DRC provided the grounds of the Appealed Decisions to the Parties.

76. The Appellant submits that on 10 September 2020 – by media release – the Asian Football Confederation ("AFC") announced that the AFC Executive Committee agreed

that the consequences of the pandemic constituted force majeure and this led to the cancellation of the 2020 competition. As a result, although qualified, the Appellant could no longer take part in this event. Indeed, the last official game played by the Appellant was on 14 March 2020.

77. The Appellant submits – as already stated in the proceedings before FIFA – that the FIFA DRC had no jurisdiction on the matter at stake.

78. In fact, the Appellant submits that the Players and the Club *"agreed that only Indian law should be applicable to disputes arising from their contractual relationship. This means that there is no room for the applicability of other provisions [...]. As a result, FIFA regulation's framework is no applicable in the present case"*.

79. According to Clause 19.4 of the Employment Contracts, *"all disputes relating to the termination shall be referred to the AIFF Player Status Committee for adjudication directly [...]"*. And Clause 19.6 of the Employment Contracts states that "*disputes which do not fall within the jurisdiction of the* [AIFF] *PSC must be submitted to an arbitration tribunal established under the Indian Arbitration and Conciliation Act 1996"*.

80. Secondly, it highlights that – according to Clause 19.1 of the Employment Contracts – the Parties agreed that Indian law shall apply.

81. Therefore, the Appellant submits that the invocation of force majeure shall be applied according to Indian law. Under Clause 17 of the Employment Contracts, force majeure means "[...] *an event or circumstance which is beyond the reasonable control of a party and which makes a party's performance of its obligations impossible and includes but is not limited to wars, act of terrorisms, civil unrest, hostilities, public disorder, epidemics, fires, Acts of God, Court Orders or Governmental restrictions and actions and decisions of regulatory and sport authorities"*. Hence, the Employment Contracts were terminated due to force majeure events and in compliance with Clause 17 of the Employment Contracts.

82. The Appellant also submits that since all decisions were made bilaterally, the termination of the Employment Contracts shall not be deemed unilateral, contrary to what is stated in the FIFA DRC findings.

83. Finally, the Appellant explains that the Players' conduct was not in good faith. Indeed, the Players argued that the Employment Contracts were wrongly terminated. However, they failed to show "*to what extent the invocation of the force majeure clause was unjustified and the contract was terminated without just cause"*. Moreover, should one assume the termination was invalid – as the Players did – they would have had the duty to continue offering their services, which they did not do.

84. In light of the above, the Appellant submits that it was right to invoke the force majeure clause under Clause 17 of the Employment Contracts and as a result, there was no breach of contract.

85. The Appellant's requests for relief are:

a. *"To set aside the Decision of the FIFA Dispute Resolution Chamber Ref. Nr. 20-00728 / 20-00729 / 20-00730;*

b. *To rule that the FIFA Dispute Resolution Chamber had no jurisdiction to pass a decision;*

c. *To establish that the costs of the arbitration procedure shall be borne by the Respondents and to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred.*

Eventualiter, and only if the above is rejected:

d. *To set aside the Decision of the FIFA Dispute Resolution Chamber Ref. Nr. 20-00728 / 20-00729 / 20-00730;*

e. *To establish that there were no breach of contract by the Appellant and no compensation payable to the First Respondent;*

f. *To establish that the costs of the arbitration procedure shall be borne by the Respondents and to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred.*

Subeventualiter, and only if the above is rejected:

g. *To set aside the Decision of the FIFA Dispute Resolution Chamber Ref. Nr. 20-00728 / 20-00729 / 20-00730;*

h. *To establish that, if compensation was payable due to breach contract, the amount of such compensation to the First Respondent shall be lower that the awarded one;*

i. *To establish that the costs of the arbitration procedure shall be borne by the Respondents and to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred."*

86. The Appellant also made the following procedural requests:

a. *"It is hereby requested that the appeal be granted suspensive effect until the existence of a final and binding award.*

b. *It is hereby requested that the appeal* [FIFA DRC Ref. Nr. 20-00730] *be joined with the appeals against the Decisions of the FIFA Dispute Resolution Chamber Ref. Nr. 20-00728 and Nr. 20-00729."*

B. The First Respondents' submissions

87. The First Respondents' submissions, in essence, may be summarised as follows.

88. The First Respondents submit that the Club did not pay their salaries from December 2019 through March 2020. Hence, the Club failed to comply with its financial obligations pursuant to the Employment Contracts.

89. The First Respondents highlight that the Appellant confirmed the overdue payments towards the Players and declared that they would be paid by 31 July 2020:

"[...] We will ensure that the fee payable for December 2019 and January and February, 2020, will be paid by 31st of July 2020 or at the time when the situation gets normal whichever is later. We will keep you updated when those payments have been made [...]."

90. The First Respondents submit that their lawyers sent a final reminder to the Club: rejecting the unilateral termination of the Employment Contracts and granting a final deadline of 10 days for the Club to reinstate the Players; to find an amicable solution to the situation at stake; and to satisfy all pending financial entitlements.

91. The First Respondents submit that – on 9 April 2020 – the Club, represented by its lawyers, sent a reply to the Players' final reminder, reiterating the Club's previous position and repeatedly confirming the unilateral termination of the Employment Contracts:

> *"We explained to you that the Covid-19 Pandemic is an event covered by the Force Majeure clause and our client has exercised its contractual rights under Clause 17 of its agreements with the Players [...]*
>
> *The contracts of the Players were terminated lawfully [...].*
>
> *For the avoidance of doubt, the termination of your clients' contracts was completely lawful and we have explained why. [...] Our client's position remains the same.*
>
> *[...] We have already confirmed that our client will arrange to pay the Players' salary for January and February by the end of April at the latest, subject to the local banking facilities being fully operational at that time".*

92. The First Respondents submit that the overdue salaries of the Players – for a period starting from December 2019 until the end of March 2020 – were still not paid by the end of April 2020.

93. The First Respondents highlight that pursuant to the provisions of the Article 1.5 of the AIFF Constitution: *"AIFF is a member of FIFA, AFC and Indian Olympic Association. Accordingly, it is self obliged to respect the statutes, regulations, directives and decisions of FIFA & AFC and to ensure that these are likewise respected by its Members".*

94. Moreover, Article 2 (d) of the AIFF Constitution establishes that one of the objectives of the AIFF is: "*to control all types of Football, ensure compliance and prevent*

infringements of the statutes, codes, rules, regulations, standing orders, directives and decisions of FIFA, AFC & AIFF and the Laws of the Game"; and Article 8 of the same document sets forth that: *"Committee members and Officials of AIFF and its Member Associations and their Affiliated Units, Intermediaries, Licensed Match Agents and Players must observe the statutes, regulations, decisions and Code of Ethics of AIFF, AFC and FIFA in their activities"*. Finally, pursuant to the provisions of Article 14.2 (e) of the AIFF Constitution, members have the obligation to ensure that their Affiliated Units comply with the statutes, regulations, codes, directives and decisions of the AIFF, the AFC, FIFA and their respective bodies.

95. The First Respondents thus submit that the FIFA Regulations are applicable to the present proceedings, regardless of the provisions of the Employment Contracts.

96. The First Respondents submit that Article R58 of the CAS Code establishes that: "*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*".

97. Therefore, the First Respondents submit that: *"[...] when parties have made an express choice of law, FIFA Regulations apply primarily, and recourse must be made to Swiss law only when questions of interpretation of the FIFA Regulations arise. As explained by HAAS (ibidem, page 15), "FIFA lays down the standard for a particular sports industry in its rules and regulations [and] the purpose of the reference to Swiss law in Art. 66 (2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry". The law chosen by the parties applies to all the matters, which are not addressed in the FIFA Regulations and which, therefore, do not require a globally uniform application, because "they are not part of the standards of the industry set by FIFA".*

98. The First Respondents explain that this reasoning is perfectly in line with the CAS doctrine, according to which: "*[...] the regulations of the federation which has issued the challenged decision also take precedence over a legal system chosen by the parties originally in the employment contract*". (HAAS U., Football Disputes between Players and Clubs before the CAS, in: BERNASCONI/RIGOZZI (ed.), Sport Governance, Football Disputes, Doping and CAS Arbitration, p. 223; ZIMMERMANN M., Vertragsstabilität im internationalen Fussball, p. 175).

99. The First Respondents stress that in the Appealed Decisions, it was rightly decided that the Club did not fulfil its burden of proof with reference to the alleged compliance of the AIFF PSC with the FIFA standards. In fact, the applicable rules of law to the case at hand are primarily the FIFA Regulations and subsidiarily Swiss law to interpret them. In accordance with Article 12.3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"): *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*". Article 8 of the Swiss Civil Code ("SCC") states that unless a

provision provides otherwise, the burden of proving the existence of an alleged fact shall rest on the party who derives rights from that fact. Except by agreement to the contrary, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute.

100. Hence, the First Respondents submit that the burden of proof – according to Swiss law – determines the consequences of lack of evidence: *"if a relevant fact remains unproven and the law does not provide otherwise, the case must be decided against the party who seeks to derive its rights from the existence of that fact (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, N 1316)".*

101. To this scope, the First Respondents submit a case in point, CAS 2018/A/5659, where it was established that:

> *"The Appellant bears the burden of proving to this Panel that the UAE FA DRC (i) can be considered a qualified independent and duly constituted dispute resolution authority meeting the minimum procedural standards as referred to in FIFA's Circular Letter no. 1010 and the NDRC Standard Regulations, and (ii) respects the principle of parity in the constitution of the arbitral tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. CAS jurisprudence is consistent in establishing the principle that "any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove facts on which it relies with respect to that issue. (...) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (CAS 2003/A/506, para 54; CAS 2009/A/1810 & 1811, para 46; CAS 2009/A/1975, paras 71 et seqq. and CAS 2014/A/3656)".*

102. Moreover, the First Respondents emphasise that the FIFA DRC correctly disregarded the provisions of Clause 19.6 of the Employment Contracts as this provision does not exclude the competence of the FIFA DRC and subsequently the CAS to adjudicate on employment related disputes of an international dimension, deriving out of the termination of the Employment Contracts.

103. The First Respondents submit that on 7 April 2020, FIFA issued FIFA Circular No. 1714, concerning the approval of "COVID-19: Football Regulatory Issues". FIFA Circular No. 1714 establishes that:

> "[...] *all agreements between clubs and employees should be "suspended" during any suspension of competitions (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question*".

104. The First Respondents also submit that Clause 9.1 of the Employment Contracts provides an exhaustive list of the grounds for the unilateral premature termination of the Employment Contracts upon request of the Club, by setting forth that:

> *"The Club may terminate this Agreement with immediate effect by written notice to the Player if the Player:*
> *a) Does not pass the medical and/or fitness test to the satisfaction of the Club,*
> *b) Is found guilty of Misconduct, and has undermined the order and discipline of the Club,*
> *c) If the Player is in violation of the Agreement despite the demands of the Club for correction and chooses to reject or ignore such demands,*
> *d) The Player has permanently lost his athletic ability as a Player due to injury or disease,*
> *e) The Player has received 2 months or more suspension from the matches of the League etc for a reason attributed to his own responsibility, jeopardizing the proper performance of the Agreement,*
> *f) Is convicted of any criminal offence which in the Club's opinion prejudicially affects the Club".*

105. The First Respondents pinpoint that force majeure was not included in the above-mentioned list. Therefore, the Appellant did not have a right to terminate the Employment Contracts prematurely due to the outbreak of the COVID-19 pandemic.

106. Finally, the First Respondents submit that the criterion of the "specificity of sport" is related to the specific nature and needs of sport. Hence, to attain a solution, the judging authority should consider not only the interests of the player and the club, but also, more broadly, those of the whole football community (CAS 2008/A/1644, at para. 139; CAS 2008/A/1568, at paras. 6.46-6.47; CAS 2008/A/1519 & 1520, at paras. 153-154; CAS 2007/A/1358, at paras. 104-105). Thus, the judging body should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case (CAS 2008/A/1519 & 1520, at para. 155).

107. Secondly, the First Respondents emphasise that the unilateral premature termination of the Employment Contracts is in principle detrimental to the main objective of the FIFA Regulations: contractual stability within the world of football. In this regard, the First Respondents assert that the Appellant terminated the Employment Contracts unilaterally and prematurely despite having outstanding payments towards the Players.

108. Thirdly, the specific moment of the premature termination should be also assessed to determine the damages suffered. In the case at hand, the Appellant unilaterally terminated the Employment Contracts soon after the beginning of the COVID-19 pandemic, thus leaving the Players unemployed without any source of income or the possibility to sign a new employment agreement with any other team due to the paralysis of the whole football market.

109. The Players' requests for relief are as follows:

a. *"To dismiss the Appeal filled by the Club against the Player and the FIFA with respect to the Decision passed by the FIFA DRC on the 20th of July 2020 with the reference No. 20-00728* [No. 20-00729 and No. 20-00730], *communicated to the Parties with grounds on the 12th of October 2020;*

b. *To confirm the Decision passed by the FIFA DRC on the 20th of July 2020 with the reference No. 20-00728* [No. 20-00729 and No. 20-00730], *communicated to the Parties with grounds on the 12th of October 2020;*

c. *To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees; and*

d. *To fix a sum of 20,000 CHF to be paid by the Appellant to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport."*

C. The Second Respondent's submissions

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

111. FIFA submits that pursuant to Article 57.2 of the FIFA Statutes, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. Indeed, under Article 25.6 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), FIFA decision-making bodies "*shall, when taking their decisions, apply these regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport*". Therefore, FIFA submits that FIFA decision-making bodies shall apply the FIFA RSTP while taking into account national laws, but not mandatorily applying them.

112. FIFA highlights that "*in casu Indian labour law would only apply, quod non, to issues not covered by the FIFA Regulations*". Hence, considering that the issues at stake are covered by the FIFA Regulations, specifically the FIFA RSTP – according to FIFA – it is undisputed that: "*the merits of the matter at hand concern: i) the competence of the FIFA DRC, covered by Article 22 of the FIFA Regulations, ii) the unilateral termination of the contract by the Club, covered by Article 13 to 16 of the RSTP and, finally, iii) the consequences of terminating a contract without just cause, clearly within the scope of Article 17 and Article 24bis RSTP*".

113. As a result, FIFA submits that "*there is no room*" for the application of either Indian labour law or the AIFF Regulations to the matter at stake. In fact, "*the RSTP needs to prevail over national law as soon as the FIFA DRC is called to decide upon a dispute falling within its competence*" to protect all parties' interests.

114. The Second Respondent submits that COVID-19 documents issued by FIFA are applicable to the present proceedings, as established in the Appealed Decisions.

115. FIFA explains that the Appellant's arguments on jurisdiction must be rejected, and that the FIFA DRC was competent to decide the contractual dispute between the Players and

Chennai FC on the termination of the Employment Contracts by the Club without just cause.

116. FIFA highlights that pursuant to Article 22(b) of the FIFA RSTP in conjunction with Article 24(1) of the FIFA RSTP, the general rule is that all employment-related disputes between a club and a player that have an international dimension must be submitted to the FIFA DRC.

117. FIFA hence submits that the dispute between Chennai FC and the Players is of an international dimension, as being between a club domiciled in India and three players of Spanish nationality. Moreover, the Appellant does not argue that the dispute is not of an international dimension.

118. FIFA submits that a party that disputes FIFA's jurisdiction to determine a claim under Article 22(b) of the FIFA RSTP – or that otherwise claims that a National Dispute Resolution Chamber ("NDRC") has jurisdiction over the matter – bears the burden of establishing that the NDRC has jurisdiction over the dispute. Moreover, Article 12.3 of the FIFA Procedural Rules determines that *"any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*.

119. The Second Respondent also submits that Swiss law, specifically Article 8 of the SCC, provides that *"unless a provision provides otherwise, the burden of proving the existence of an alleged fact shall rest on the party who derives rights from that fact"*.

120. FIFA submits that the Club bears the burden of proof in the case at stake and had failed to discharge its burden of proof by not submitting any documentary evidence in connection with the AIFF PSC that was referred to in Clause 19 of the Employment Contracts.

121. FIFA emphasises that the Appellant has failed to provide complete copies of the AIFF Statutes and the AIFF Regulations on the Status and Transfer of Players ("AIFF RSTP"). Already at this stage, since the Appellant only submitted extracts of the regulations which apparently from the legal basis for the alleged competence of the AIFF PSC or of an undetermined arbitral tribunal, the Appellant failed to fulfil its burden of proof. Hence, FIFA submits that the Panel would not be in a position to fully assess whether the requirements for the recognition of the relevant national deciding bodies may be fulfilled.

122. The Second Respondent submits that the Appellant has not provided sufficient evidence that may allow the Panel to conclude that the AIFF PSC and/or the undetermined Indian arbitral tribunal referred to in the Appellant's Appeal Brief comply with the requirements contained in FIFA Circular No 1010 and Article 22(b) of the FIFA RSTP.

123. FIFA submits that Article 22(b) of the FIFA RSTP is clear with regards to FIFA's competence:

> *"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

[...]

b) employment-related disputes between a club and a player 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 players and clubs."

124. FIFA argues that Clause 19 of the Employment Contracts does not constitute a clear and exclusive jurisdiction clause in favour of the AIFF PSC, since it also refers to the jurisdiction and competence of a sole arbitrator that should rule based on the provisions of the Indian Arbitration and Conciliation Act 1996. Indeed:

"Clause 19.4 of the Employment Contract determines that "all disputes relating to termination shall be referred to the AIFF Player Status Committee" and not to an arbitral tribunal chosen by the parties:

"If the dispute is not within the jurisdiction of scope of the AIFF Player Status Committee then it shall be referred to arbitration under a sole arbitrator appointed by mutual consent under the provisions of the Arbitration and Conciliation Act 1996 or any modification thereof then in effect. The Arbitration shall be in English and the seat and venue of Arbitration shall be Chennai. Subject to the above, the Courts in Chennai shall have sole and exclusive jurisdiction in respect of all matters addressed under the Clause".

Clause 19.6 referring to the Indian Arbitration and Conciliation Act 1996 is not enough to prove that any arbitration proceedings would be instituted by an arbitration tribunal established within the framework of the AIFF (i.e. the national association)."

125. FIFA submits that, therefore, the exception to the competence of the deciding bodies of FIFA contained in Article 22(b) of the FIFA RSTP regarding employment-related disputes of an international dimension is not applicable in that case, since the "*undefined arbitral tribunal*" has not been established at the national level or within the framework of a national football association and/or a collective bargaining agreement.

126. FIFA also submits that Clause 19 of the Employment Contracts – due to its unclarity – does not provide exclusive jurisdiction to the AIFF PSC.

127. FIFA clarifies that, according to the 2011 AIFF RSTP, the requirements of FIFA Circular No 1010 – with reference to the principles that an independent tribunal must comply with – are not met.

128. Furthermore, FIFA submits that the AIFF PSC does not comply with the minimum procedural standards of FIFA Circular No 1010 according to the 2020 AIFF RSTP.

129. FIFA highlights that its involvement in the present proceedings is only due to the Appellant's attempt to discredit the jurisdiction of the FIFA DRC. Since FIFA is arguing in favour FIFA's competence – which FIFA submits to have confirmed – the dispute becomes *"horizontal in nature"*: *"In line with the constant CAS jurisprudence which confirms that FIFA does not have standing in so-called 'horizontal' disputes, once the jurisdiction of FIFA's DRC has been addressed and confirmed, it becomes unnecessary for FIFA to comment on a dispute which exclusively concerns the other parties to this arbitration"*.

130. Indeed, FIFA submits that it does not have standing to be sued with reference to the Appellant's alternative requests for relief "*which find their cause of action purely on the contractual relationship between the other parties to this procedure*" and exclusively concern the other Parties to this arbitration.

131. Hence, FIFA submits that it declines to comment on the merits of the contractual dispute. However, it deems necessary to clarify the meaning of the FIFA's regulations and particularly of the FIFA COVID-19 Guidelines, since the Appellant has based a significant part of its Appeal Brief on the existence of a situation of force majeure in view of the COVID-19 pandemic.

132. FIFA highlights that the Appellant terminated the Employment Contracts with the Players on 29 March 2020, invoking a force majeure event in view of the COVID-19 pandemic without any prior notice.

133. FIFA submits that the Appealed Decisions rightly concluded that "*FIFA did not declare that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. In other words, in any given dispute, it is for a party invoking force majeure to establish the existence of said event under the applicable law/rules as well as the consequences that derive in connection thereto. The analysis of whether a situation of force majeure existed has to be considered on a case-by-case basis, taking into account all the relevant circumstances*".

134. Furthermore, FIFA submits that:

> *"as established in the FAQ no.16, as well as pages 6 and 7 of the FIFA COVID-19 Guidelines, except where a termination of a contract occurred following a unilateral variation made as a result of COVID-19 (in which case the validity of the variation must first be assessed under the guidelines), said guidelines do not apply to the assessment of unilateral terminations of existing employment agreements. Therefore, as clearly put forth in FAQ no. 16 only the RSTP applies to the assessment of disputes that are presented before the FIFA deciding bodies concerning the unilateral termination of a contract:*

"The FIFA guiding principles in this section only refer to unilateral variations to existing employment agreements. Do they also apply to unilateral terminations of existing employment agreements?

No, the RSTP shall apply in the assessment of disputes that arise before the FIFA judicial bodies concerning unilateral terminations".

135. FIFA highlights that – since in the cases at stake, it is an undisputed fact that no variation of the Employment Contracts prior to their termination occurred – the COVID-19 Guidelines are inapplicable and only the FIFA Regulations and the jurisprudence of the FIFA DRC can be applied.

136. FIFA submits that the Appellant was prevented from invoking a force majeure situation and unilaterally terminating the Employment Contracts, since it had already defaulted the salaries between December 2019 and March 2020 to the Players, and the alleged force majeure situation occurred after its default.

137. FIFA submits that CAS jurisprudence is clear on the fact that a party cannot benefit from an alleged force majeure situation that occurred after its default as a ground to evade its financial obligations. Hence, the Appellant shall be prevented, according to CAS case law, from invoking a force majeure event in the present proceedings and its argument to this effect should be dismissed by the Panel.

138. Nevertheless, FIFA submits that, should the Panel deem it necessary to further assess the force majeure situation invoked by the Appellant, the burden of proof on the occurrence of force majeure is borne by the Appellant.

139. FIFA argues that the Appellant has not submitted any documentary evidence to support its position that the situation it faced was to be considered a situation of force majeure entitling it to terminate the Employment Contracts.

140. FIFA submits that it agrees with the Appealed Decisions according to which: *"there is no documentation on file on the basis of which it could be concluded that the Respondent took such precautions or attempted to mitigate the damages for the Claimant. As said, the Respondent decided to immediately unilaterally terminate the contract, without exploring less drastic measures and without any prior notice to the player".*

141. Furthermore, FIFA underlines that – in light of the jurisprudence of the Swiss Federal Tribunal – "*Force majeure takes place in the presence of extraordinary and unforeseeable events that occur beyond the sphere of activity of the person concerned and that impose themselves on him/her in an irresistible manner*". Moreover, considering the case CAS 2006/A/1110, *"[...] the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation*".

142. As a result, FIFA submits that the situation invoked by the Club *"cannot be described as a case of force majeure".*

143. FIFA's requests for relief are as follows:

a. *"rejecting the reliefs sought by the Appellant;*

b. *confirming the Appealed Decision;*

c. *ordering the Appellant to bear the full costs of these arbitration proceedings; and*

d. *ordering the Appellant to make a contribution to FIFA's legal costs."*

V. JURISDICTION

144. Article R47 of the CAS 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".*

145. Article 58 para. 1 of the FIFA Statutes 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 notification of the decision in question.*"

146. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by the Respondents and is confirmed by the signature of the Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present disputes.

VI. ADMISSIBILITY

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

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or 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".*

148. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

> *"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 notification of the decision in question".*

149. The grounds of the Appealed Decisions were notified to the Appellant on 12 October 2020, and it filed its Statements of Appeal on 2 November 2020. Therefore, the 21-day deadline to file the appeals was met.

150. The Panel finds, therefore, the present appeals admissible.

VII. APPLICABLE LAW

151. The Appellant argues that the law applicable to the Employment Contracts is Indian law. In this respect, Clause 19.1 of the Employment Contracts reads as follows: "*This Agreement shall be governed by and construed in accordance with Indian law*".

152. However, Article R58 of the CAS Code contains a conflict-of-law rule for determining the applicable law in appeal arbitration proceedings. Such provision states as follows:

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

153. The purpose of such provision is to promote the uniform interpretation and application of the relevant regulations in order to ensure equal treatment of all the parties involved in sports disputes: "*This is what Art. R58 of the CAS Code is endeavouring to ensure, by stating that the rules and regulations of the sports organisation that has issued the decision (that is the subject of the dispute) are primarily applicable*" (Ulrich Haas, Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law - 2015).

154. By submitting the relevant dispute to the CAS, the parties "*have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of FIFA (...). In accordance with the Haas-doctrine, Article R58 of the CAS Code serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties. Hence, any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law*" (CAS 2018/A/5771).

155. Indeed, the relevant doctrine and CAS jurisprudence point out that Article R58 of the CAS Code has the purpose of restricting the autonomy of the parties. As a matter of

fact, even if an explicit choice of law was made in a contract under dispute, the "*applicable regulations*" are primarily applied and take precedence over any law chosen by the parties. These are the relevant rules of the association that made the first instance decision that is being contested in the appeal arbitration procedure (CAS 2014/A/3626).

156. Furthermore, Article 57 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 apply the various regulations of FIFA and, additionally, Swiss law*".

157. Prof Haas's study (Ulrich Haas, Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law - 2015) discusses the criteria to determine which law should apply in these cases.

158. Specifically, as correctly emphasized by another author, "[Prof Haas's] *study suggests that Swiss law, being the law to which the governing FIFA Statutes refer, should apply to all matters covered by the FIFA regulations – to the extent the latter require interpretation or supplementation, or present a lacuna – whereas the (rules of) law chosen by the parties should apply to all matters that do not come within the purview of FIFA regulations"* (Dr Manuel Arroyo, Attorney-at-Law, LL.M., Arbitration in Switzerland, The Practitioner's Guide, Second edition, Volume II).

159. Furthermore, according to the same author, *"Hence, whether a contract has been terminated with just cause, as well as the consequences of a termination without just cause, both issues covered by the RSTP (in Arts. 14 and 17 respectively) should be determined in accordance with those regulations and ("additionally", to the extent necessary) Swiss law. On the other hand, whether a contract has been validly concluded, or invalidated (for instance on grounds of error, fraud, duress, etc.), whether a given contractual requirement can be deemed satisfied, or the interest rate that should apply to any damages awarded pursuant to Art. 17 RSTP, all issues that are not regulated in the RSTP, should be determined in accordance with the law (if any) chosen by the parties to govern the underlying contract*" (Dr Manuel Arroyo, Attorney-at-Law, LL.M., Arbitration in Switzerland, The Practitioner's Guide, Second edition, Volume II).

160. Only circumstances not covered by the FIFA Regulations leave room for the parties to decide the possible choice of law made in the relevant contracts (see CAS 2017/A/5111).

161. Hence, it follows that *in casu*, Indian labour law would only apply, *quod non*, to issues not covered by the FIFA Regulations. However, it is evident that all the issues which comprise the merits of the present matter are indeed covered by the FIFA RSTP.

162. As a consequence of the above, the Panel shall decide the present matter in accordance with the relevant FIFA regulations, and more specifically the FIFA RSTP and the FIFA Procedural Rules, as in force at the relevant time of the dispute, namely the March 2020

edition with respect to the FIFA RSTP and the 2020 edition with respect to the FIFA Procedural Rules. Swiss law shall be applied subsidiarily.

163. In view of the foregoing, Indian law would solely apply subsidiarily if certain issues were not covered by the FIFA Regulations and Swiss law.

164. However, the present matter is covered by the FIFA RSTP since it regards the following issues: (i) the competence of the FIFA DRC to issue the Appealed Decisions, which is covered by Article 22 of the FIFA RSTP; (ii) the unilateral termination of the Employment Contracts by the Club, regulated by Articles 13-16 of the FIFA RSTP; and (iii) the consequences in case of termination of an employment contract without just cause, covered by Articles 17 and 24bis of the FIFA RSTP.

VIII. MERITS

165. The main issues to be resolved by the Panel in deciding this dispute are the following:

(a) Was the FIFA DRC competent to hear the case and to issue the Appealed Decisions?

(b) Did the Appellant have just cause to terminate the Employment Contracts unilaterally and prematurely?

(c) What is the compensation due, if any?

(d) Does the Second Respondent have standing to be sued in the present proceedings?

A. Was the FIFA DRC competent to hear the case and to issue the Appealed Decisions?

166. The Appellant submits that the FIFA DRC was not competent to deal with the present matter, and, therefore, to issue the Appealed Decisions.

167. Indeed, according to the Appellant, pursuant to Clause 19 of the Employment Contracts, the Parties agreed to submit potential disputes to the jurisdiction of the AIFF and its adjudicating bodies (i.e. the AIFF PSC). The Club further argued that, in light of this clause, disputes that do not fall within the jurisdiction of the AIFF PSC should be submitted to an arbitration tribunal according to the Indian Arbitration and Conciliation Act 1996.

168. The First and the Second Respondents, in turn, considered that the FIFA DRC was competent to hear the respective cases and to issue the Appealed Decisions.

169. Article 22(b) of the FIFA RSTP (edition June 2020) reads as follows:

> "*Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

[...]

b) employment-related disputes between a club and a player 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 tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs".

170. Moreover, the interpretation rendered on the above provision by the footnote 101 of the FIFA RSTP Commentary (2005) provides that:

"*FIFA is competent for:*

[...]

Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal has been established at national level. The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned.
[...]

If the association where both the player and the club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes".

171. Therefore, and as constantly confirmed by CAS jurisprudence, the FIFA DRC remains competent to deal with employment-related disputes between a club and a player of an international dimension, unless the parties have chosen to submit their dispute to an independent arbitration tribunal guaranteeing fair process, which has been established to this effect at the national level. Therefore, in the event an independent arbitration tribunal guaranteeing fair process exists at the national level, a dispute of an international dimension may be submitted to it, if the parties have explicitly agreed so (CAS 2015/A/4333; CAS 2014/A/3864; CAS 2013/A/3172).

172. In consideration of the foregoing, the Panel notes that in an employment-related dispute of an international dimension, the contracting parties may lawfully submit to a body other than the FIFA DRC only in case the following conditions have been cumulatively met:

- there is an independent arbitration tribunal at the national level;

- the jurisdiction of such national independent arbitration tribunal derives from a clear agreement established in the employment contract;

- the national independent arbitration tribunal can guarantee a fair process, and the respect of the principle of equal treatment for both the club and the player as well.

173. In the cases-at-hand, the Panel notes that Clause 19 of the Employment Contracts contains a dispute resolution clause in favour of the AIFF PSC or, in the event the case does not fall within the jurisdiction of the AIFF PSC, a sole arbitrator appointed under the provisions of the Indian Arbitration and Conciliation Act 1996.

174. Therefore, the Panel has to assess whether the AIFF PSC and the Arbitration Tribunal referred to by the Appellant meets the requirements set forth by Article 22(b) of the FIFA RSTP (edition June 2020).

i. General Remarks

175. The fair-process requirement embedded in Article 22(b) of the FIFA RSTP has been disaggregated in FIFA Circular No 1010 (dated 20 December 2005), which reads as follows:

> *"[...] This minimum procedural standard comprises the following conditions and principles:*
>
> - ***Principle of parity when constituting the arbitral tribunal***
> *The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.*
>
> - ***Right to an independent and impartial tribunal***
> *To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.*
>
> - ***Principle of a fair hearing***
> *Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.*
>
> - ***Right to contentious proceedings***
> *Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.*

- ***Principle of equal treatment***
  The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way vis-à-vis the parties". (emphasis in original)

176. The Panel notes that although FIFA's Circular Letters are not regulations in a strict legal sense, they are still relevant for the interpretation of the FIFA Regulations, and have been accepted as such in relevant CAS case law (CAS 2016/A/4448; CAS 2015/A/4153).

177. FIFA's NDRC Standard Regulations, which are also relevant to the present dispute as they lay out organizational and other aspects of NDRCs, have been implemented by FIFA Circular No 1129 dated 28 December 2007. Article 3 of the FIFA NDRC Standard Regulations reads as follows:

> "*3. Composition*
>
> *1. The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate:*
>
> *a) a chairman and a deputy chairman chosen by consensus by the player and club representatives from a list of at least five persons drawn up by the association's executive committee;*
>
> *b) between three and ten player representatives who are elected or appointed either on the proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro;*
>
> *c) between three and ten club representatives who are elected or appointed on the proposal of the clubs or leagues.*
>
> *2. The chairman and deputy chairman of the NDRC shall be qualified lawyers.*
>
> *3. The NDRC may not have more than one member from the same club.*
>
> *4. The NDRC shall sit with a minimum of three members, including the chairman or the deputy chairman. In all cases the panel shall be composed of an equal number of club and player representatives".*

178. The Panel shall first determine which of the Parties bears the burden of proof to demonstrate that the contractually chosen Indian arbitration forum meets the requirements of Article 22(b) of the FIFA RSTP, as detailed in FIFA Circular No 1010 cited above.

179. The Panel allocates the burden of proof in accordance with the rules of law governing the merits of the dispute (BERGER / KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, n. 1316).

180. As held above, the applicable rules of law in the present dispute are FIFA Regulations, and additionally Swiss law. The applicable FIFA Regulations do not contain a provision on the burden of proof for the present dispute. Indeed, Article 12 para. 3 of the FIFA Procedural Rules – according to which "*Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*" – is not applicable in this case because, as set forth in Article 1 para. 1 of the FIFA Procedural Rules, such provision applies only to procedures in front of the FIFA Players' Status Committee and the FIFA DRC, and not before CAS (CAS 2015/A/4333).

181. Consequently, and according to Article 66 para. 2 of the FIFA Statutes, Swiss law shall apply. In this respect, Article 8 of the SCC states that unless a provision provides otherwise, the burden of proving the existence of an alleged fact shall rest on the party that derives rights from that fact.

182. Indeed, as highlighted in CAS2018/A/6005, "*In order to fulfil its burden of proof, a party must, therefore, provide the panel with all relevant evidence that it holds, and, with reference thereto, convince the panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (CAS 2016/A/4580 consid. 91 and references). It is the Club's duty to objectively demonstrate the existence of what it alleges (ATF 132 III 449; consid. 4). It is not sufficient for it to simply assert a state of fact for the Sole Arbitrator to accept it as true*".

183. The same reasoning on the burden of proof has been applied in previous CAS awards (CAS 2016/A/4843, CAS 2016/A/4580, CAS 2015/A/3909, CAS 2007/A/1380, CAS 2005/A/968): "[...] *In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party*".

184. According to the relevant Swiss legal doctrine and CAS jurisprudence, if a relevant fact remains unproven and the law does not provide otherwise, the case must be decided against the party that claims the existence of that fact (BERGER / KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, n. 1316; CAS 2015/A/4333).

185. The Panel will address in turn below the compliance with FIFA Circular No 1010 of, first, the AIFF PSC and then second the Arbitral Tribunal under the under the Indian Arbitration and Conciliation Act 1996.

ii. AIFF PSC

186. In the Appealed Decisions, the FIFA DRC established that the Appellant was unable to prove that the AIFF PSC met the minimum requirements set forth in FIFA Circular No 1010. Specifically, the Appealed Decisions read: "*the Respondent* [the Club] – *despite arguing that based on the contents of article 19 of the contract the AIFF Players' Status*

Committee should be competent to deal with the matter at hand – did not provide any documentary evidence in connection with said deciding body".

187. The Appellant, in its Appeal Briefs, contested that it has the burden of proof with regard to the competence of the AIFF PSC, and its compliance with the standards established in FIFA Circular No 1010.

188. In their Answers, in turn, the Respondents maintained that the burden of proof rests on the Appellant.

189. In view of the above, the Panel notes that the Appellant and the Respondents were expressly invited to provide their position concerning whether the AIFF PSC met the minimum procedural standard set forth in FIFA Circular No 1010.

190. However, the Appellant insisted on claiming that it did not bear the burden of proof and, particularly, that it did not have to prove the independence of such bodies, since they had been contractually agreed by the Parties to serve as the competent bodies to adjudicate all disputes that could arise from the operation of the contract.

191. The Panel further notes that the Appellant submitted the following documents: (i) the 2020 edition of the AIFF RSTP; (ii) the 2021 edition of the AIFF RSTP; and (iii) the 2020 edition of the AIFF Rules Governing the Procedures of the AIFF Player's Status Committee ("AIFF Procedural Rules").

192. The Panel observes that the 2020 AIFF RSTP entered into force on 1 August 2020, and the 2021 AIFF RSTP on 1 June 2021, whilst the AIFF Procedural Rules entered into force on 1 August 2021.

193. The Respondents correctly highlighted that all the aforementioned regulations had entered into force after the events giving rise to the present dispute, and even after the date when the relevant claims were lodged before the FIFA DRC. Thus, they are not applicable to this case, as the principle of non-retroactivity would dictate.

194. In view of the foregoing, the Panel finds that the Appellant did not discharge its burden of proof with respect to the lack of jurisdiction of the FIFA DRC to decide the dispute and the compliance of the AIFF PSC with the standards established by FIFA Circular No 1010.

195. On the contrary, the Panel considers to be persuasive FIFA's arguments contesting the compliance of the AIFF PSC with the minimum requirements set forth by the FIFA Circular No 1010.

196. In this regard, the Panel recalls that in order for the AIFF PSC to be considered an "*independent arbitration tribunal guaranteeing fair proceedings*", it must cumulatively meet all the requirements listed in FIFA Circular No 1010.

197. FIFA submitted that the AIFF PSC did not meet the criteria in FIFA Circular No 1010, arguing as follows:

198. With reference to the AIFF PSC, the 2011 AIFF RSTP specifies the following:

> *"Article 38 - Without prejudice to the right of any player or club to seek redress before a civil court in disputes between clubs and players, a dispute shall be referred to the Players Status Committee for resolution.*
>
> *Article 39 - The arbitration system will take account of all relevant arrangement, laws and/or collective bargaining arrangements, which exist at national level as well as the specificity of sport.*
>
> *Article 40 - The Players Status Committee shall not address any dispute under these regulations if more than two years have been elapsed since the facts leading to the dispute arose. The Players' Status Committee shall set up and monitor compliance with the Regulations on the Status and Transfer of Players and determine the status of Players for various AIFF competitions. Its powers of jurisdiction are governed by the Regulations on the Status and Transfer of Players."*

199. Moreover, Article 52 of the 2017 AIFF RSTP sets forth that: *"The Players' Status Committee shall monitor compliance with the AIFF Regulations on the Status and Transfer of Players and determine the status of Players for Competitions. Its powers and jurisdiction are governed by the AIFF Regulations on the Status and Transfer of Players."*

200. Consequently, there was lack of proof demonstrating that the principle of parity was indeed respected by the AIFF PSC. The Panel sees great force in this argument. The Panel wishes to emphasise that, since all the requirements included in FIFA Circular No 1010 must be cumulatively met, the failure to observe even one of them is fatal. The principle of parity has, as explained above, not been met. Consequently, in the Panel's view, the AIFF PSC is not an "independent tribunal" in the sense of the FIFA Circular No 1010. Under the circumstances, the FIFA DRC had lawfully exercised jurisdiction when adjudicating the present disputes.

201. In conclusion, as the AIFF PSC does not meet the requirements embedded in the FIFA Circular No 1010, the present dispute could not have been lawfully submitted to it.

iii. Arbitration Tribunal under the Indian Arbitration and Conciliation Act 1996

202. The competence of the Arbitral Tribunal under the Indian Arbitration and Conciliation Act 1996 foreseen under the Employment Contracts was not discussed in the Appealed Decisions at all. The Panel, however, has *de novo* power of review under Article R57 of the CAS Code, and the ensuing right to review whether the Arbitral Tribunal meets the requirements embedded in FIFA Circular No 1010.

203. The question is whether "*a sole arbitrator that should rule on the basis of the provisions of the Indian Arbitration and Conciliation Act 1996*" under Clause 19 of the

Employment Contracts can be deemed as a valid arbitral tribunal in the sense of Article 22 of the FIFA RSTP.

204. Clause 19.4 of the Employment Contracts determines that "*all disputes relating to termination shall be referred to the AIFF Player Status Committee*" and not to an arbitral tribunal chosen by the Parties.

205. In this regard, Clause 19.6 of the Employment Contracts is unclear about exactly which body it refers to. It states: "*If the dispute is not within the jurisdiction of scope of the AIFF Player Status Committee then it shall be referred to arbitration under a sole arbitrator appointed by mutual consent under the provisions of the Arbitration and Conciliation Act 1996 or any modification thereof then in effect. The Arbitration shall be in English and the seat and venue of Arbitration shall be Chennai. Subject to the above, the Courts in Chennai shall have sole and exclusive jurisdiction in respect of all matters addressed under the Clause*".

206. The Panel holds that the reasons why it had held that the AIFF PSC was not in compliance with the threshold conditions included in the FIFA Circular No 1010 are also relevant here. Clause 19.4 of the Employment Contracts does not provide any information regarding the quintessential question that is before the Panel in this context, namely that disputes with an international dimension could lawfully be submitted to an NDRC only if the latter met the threshold conditions of Article 22(b) of the FIFA RSTP as detailed in the FIFA Circular No 1010. Irrespective of the allocation of the burden of proof, the Panel has not been provided with any information that would permit it to conclude that this had been the case with respect to the sole arbitrator under the Indian Arbitration and Conciliation Act envisioned under the Employment Contracts. The fact that the parties had agreed to a sole arbitrator/arbitral tribunal under the Indian Arbitration and Conciliation Act in the Employment Contracts is not sufficient. In this regard, the Panel recalls that under Article 22(b) of the FIFA RSTP as detailed in FIFA Circular No 1010, while contracting parties can lawfully submit their disputes to an NDRC, they can do so only if the NDRC meets their threshold conditions. This was not proven to be the case to the satisfaction of this Panel. In fact, FIFA's allegation that the principle of parity was not observed remained unanswered by the Appellant.

207. The arbitration tribunal established under the Indian Arbitration and Conciliation Act could not be considered competent to adjudicate on the current dispute, as it is not: "*an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement*".

208. Indeed – in accordance with Article 22 b) of the FIFA RSTP – the Arbitration Tribunal should have been established under the AIFF.

209. In other words, in conclusion, as the Arbitral Tribunal under the Indian Arbitration and Conciliation Act 1996 does not meet the requirements of FIFA Circular No 1010, the present dispute could not have been lawfully submitted to it.

iv. Conclusions

210. The Panel finds that the Appellant has not discharged its burden of proof to establish that either the AIFF PSC or the Arbitration Tribunal under the Indian Arbitration and Conciliation Act meet the minimum procedural standards set forth by the FIFA Circular No 1010 in order to be classified as "independent" and "duly constituted" under the provision set forth under Article 60 para. 3 c) of the FIFA Procedural Rules.

211. The Panel determines that – based upon the documentation submitted by the Appellant in support of its contentions that the AIFF PSC and the Arbitration Tribunal under the Indian Arbitration and Conciliation Act complied with the requisite criteria – it is not possible to state that either meets the minimum procedural standards as per FIFA Circular No 1010.

212. In light of the above, the Panel concludes that the FIFA DRC had lawfully exercised jurisdiction when adjudicating at first instance the present dispute.

B. Did the Club have just cause to terminate the Employment Contracts unilaterally and prematurely?

213. After having ascertained that the FIFA DRC was competent to hear the cases and to issue the Appealed Decisions, the next issue to be resolved is whether the Appellant terminated the Employment Contracts with or without just cause.

214. The Appellant alleges that it had just cause to terminate the Employment Contracts, without any prior notice, due to the occurrence of force majeure because of the COVID-19 pandemic.

215. In its Appeal Brief, the Appellant recalled the termination letters of 29 March 2020 as follows: "*We are writing to formally declare a Force Majeure event due to the Covid-19 pandemic [...] As you are aware the football league in India as well as all international events have been suspended. [...] There is express provision for this type of event in your agreement with the Club (under Clause 17). It is clear that these events are neither the fault of the Club or the players and are due to events which are beyond anyone's control. [...] It is therefore with great regret and sadness that the Club has no alternative but to terminate your agreement with the Club with immediate effect through this declaration of Force Majeure. [...]*".

216. According to the Appellant, Clause 17 of the Employment Contracts entitled the Club to terminate the employment relationships due to the occurrence of an event of force majeure. Such clause reads as follows:

> "*Subject to the other provisions of this Agreement, the failure of a party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability arises from an event of Force Majeure, provided that the party affected by that event has taken reasonable precautions, has duly communicated the occurrence of the event to the other party, and has taken due care and attempted to mitigate the consequences of such event, all with the objective of carrying out the terms of this Agreement without delay. For the purpose of*

> *this Agreement, "FORCE MAJEURE" means an event or circumstance which is beyond the reasonable control of a party and which makes a party's performance of its obligations impossible and includes but is not limited to wars, acts of terrorism, civil unrest, hostilities, public disorder, epidemics, fires, Acts of God, Court Orders or Governmental restrictions and actions and decisions of regulatory and sports authorities*".

217. The Club argued that the official measures undertaken due to the COVID-19 pandemic led to a situation that did not allow the Employment Contracts to be maintained.

218. Furthermore, the serious financial situation of the Club rendered the payment of the Players' salaries impossible.

219. The First Respondents, in turn, stressed that the Appellant should have taken temporary measures in order to safeguard the Employment Contracts. In any event, according to the Players, the premature unilateral termination of the Employment Contracts could not be justified under the means of the occurrence of a force majeure event.

220. Furthermore, the First Respondents pointed out that the Appellant had already failed to pay the relevant salaries in the period from December 2019 to March 2020 and, thus, there were outstanding payments already before the outbreak of the COVID-19 pandemic.

221. All the above considered, the Panel notes that Article 13 of the FIFA RSTP defends the principle of contractual stability and it expressly states that "*a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement*".

222. The principle referred to above may however be subject to derogation. Indeed, according to Article 14 of the FIFA RSTP, "*a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause*".

223. In line with the relevant CAS jurisprudence, *"the principle of* pacta sunt servanda *lies at the basis of the football system, since it gives legal foundation to the stability of contractual relations, which would be severely jeopardized if the parties to employment contracts - the players and the clubs - could all too easily get rid of the obligations undertaken thereunder: while clubs make investments in players, to be recovered over the term of the contract, the players derive their living from the contract. Both parties' expectations, objectively understood, are therefore that contracts are respected until their expiry. Such principle of contractual stability is expressly recognized by Article 13 RSTP, which confirms that* 'a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement'. *However, the principle of contractual stability is not absolute as Article 14 of the RSTP provides that* 'A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause'. *Such exception to a fundamental principle is to be interpreted narrowly: therefore, only*

if there is 'just cause' can a binding employment contract be terminated by either the player or the club" (CAS 2015/A/4046 & 4047).

224. In this respect, the FIFA commentary on the RSTP reads as follows:

> "*1. The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.*
>
> *[...]*
>
> *5. In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.*
>
> *6. On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed*".

225. In addition, the Panel takes into consideration the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations.

226. In this respect, Article 337 of the Swiss Code of Obligations ("SCO") reads as follows:

> "*1. Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give his reasons in writing at the other party's request.*
>
> *2. In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.*
>
> *3. The court determines at its discretion whether there is good cause. However, under no circumstances may the court hold that good cause is constituted by an employee being prevented from working through no fault of his own*".

227. It derives from the above that the definition of "just cause", as well as the question of whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (ATF 127 III 153 1.a). Indeed, only a particularly severe breach of the employment contract may result in its immediate termination (CAS 2017/A/5182).

228. Furthermore, pursuant to the well-established jurisprudence of the CAS, only material breaches of an employment contract constitute just cause for its termination. The breach must be material in the sense that, in the circumstances of the breach at stake, the other party cannot be expected to continue the contract while the first party is in breach (CAS 2004/A/587; CAS 2006/A/1180; CAS 2006/A/1100; CAS 2011/A/256).

229. By reading the termination letters sent by the Appellant to the First Respondents on 29 March 2020, the Panel notes that it terminated the Employment Contracts invoking force majeure in light of the COVID-19 pandemic, without giving any prior notice.

230. Moreover, the First Respondents pointed out that the Appellant terminated the Employment Contracts without just cause since it failed to pay the relevant salaries in the period from December 2019 to March 2020 and, thus, there were outstanding payments already before the outbreak of the COVID-19 pandemic.

231. Furthermore, the First Respondents stressed that the termination of the Employment Contracts was not in line with the FIFA Regulations and the FIFA COVID-19 Guidelines since they do not recognise the COVID-19 pandemic as an issue that permits the termination of an employment relationship for just cause due to force majeure.

232. The Panel observes that the unilateral termination of the Employment Contracts made by the Appellant was done on the assumption that the COVID-19 pandemic constituted a force majeure event so that it had no other option but to terminate the employment relationships.

233. As a preliminary matter, the Panel notes that outstanding salaries were owed to the Players prior to March 2020, i.e. the date that the COVID-19 pandemic began to grip most of the world. As such pre-dated the onset of the pandemic and the measures related thereto in India, the Appellant cannot claim force majeure with respect to such payments.

234. In addition, the Panel deems it appropriate to consider the content of the FIFA COVID-19 Guidelines as well as the FIFA COVID-19 FAQs, since they elicit the purpose of providing a common set of guidelines and recommendations in order to mitigate the consequences of the COVID-19 pandemic.

235. Furthermore, the Panel notes the contents of Clause 17 of the Employment Contracts, invoked by the Appellant for its termination, which provides:

> "*17. FORCE MAJEURE*

> *Subject to the other provisions of the Agreement, the failure by a party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability arises from an event of Force Majeure, provided that the party affected by that event has taken reasonable precautions, has duly communicated the occurrence of the event to the other party, and has taken due care and attempted to mitigate the consequences of such event, all with the objective of carrying out the terms of this Agreement without delay. For the purpose of this Agreement, "FORCE MAJEURE" means an event or circumstance which is beyond the reasonable control of a party and which makes a party's performance of its obligations impossible and includes but is not limited to wars, acts of terrorism, civil unrest, hostilities, public disorder, epidemics, fires, Acts of God, Court Orders or Governmental restrictions and actions and decisions of regulatory and sports authorities*".

236. The Panel, however, notes that the FIFA COVID-19 Guidelines as well as the FIFA COVID-19 FAQs did not declare the COVID-19 pandemic to be a force majeure event nor does it provide that employment contracts shall be terminated due to COVID-19 as force majeure.

237. Indeed, the answer to the question in the FAQs of "*Did the Bureau of the FIFA Council declare a "force majeure" situation in any territory? Can this declaration be relied upon by MAs, clubs, or employees*?", FIFA Circular No 1720 expressly stated as follows:

> "*Article 27 of the* [FIFA] *RSTP allows the FIFA Council to decide "(...) matters not provided for and in cases of force majeure".*
>
> *In this context, on 6 April 2020, the Bureau made several decisions regarding regulatory and legal issues as a result of COVID-19. In order to temporarily amend the RSTP, the Bureau relied upon article 27 as its source of power, determining that the COVID-19 outbreak was a matter not provided for and a force majeure situation for FIFA and football generally.*
>
> *The Bureau did not determine that the COVID-19 outbreak was a force majeure situation in a specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure.*
>
> *For clarity: clubs or employees cannot rely on the Bureau decision to assert a force majeure situation (or its equivalent).*
>
> *Whether or not a force majeure situation (or its equivalent) exists in the country or territory of an MA is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement*".

238. Furthermore, the abovementioned set of guidelines and rules are applicable only to "*unilateral variations to existing employment agreements*". Consequently, such rules are not applicable in case of termination of an existing employment agreement, but only in case of a termination of an agreement due to or as a consequence of a unilateral termination of it made because of the COVID-19 pandemic.

239. According to CAS jurisprudence, for force majeure to exist there must be "*an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible*" (see CAS 2013/A/3471; CAS 2015/A/3909). This definition of force majeure must be narrowly interpreted because it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is at the basis of the legal system and necessary for maintaining contractual stability.

240. In addition, in accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also set forth in Article 8 of the SCC, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (see IBARROLA J., La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond, in BERNASCONI/RIGOZZI (eds.), CAS 2009/A/1810 & 1811; CAS 2017/A/5182).

241. Taking into consideration all of the foregoing, the Panel notes that the Appellant did not submit any evidence in support of its argument that it was entitled to unilaterally terminate the Employment Contracts with the Players without compensation by invoking the COVID-19 pandemic as reason of force majeure to this effect.

242. Furthermore, the Panel considers it appropriate to refer to the content of Clause 17 of the Employment Contracts, according to which the party which fails to fulfil its obligations "*shall take reasonable precautions (...), has taken due care and attempted to mitigate the consequences of such event (...)*".

243. In this regard, the Panel notes that the Appellant did not submit any evidence proving that it adopted such precautions or attempted to mitigate the damages for the Players. Indeed, the Appellant terminated the Employment Contracts unilaterally, without invoking any wrongdoing of the Players, without providing them with any prior notice and without adopting less drastic measures.

244. Additionally, the Panel is of the firm opinion that Clause 17 of the Employment Contracts governs the performance of the agreements and, in particular, the timely respect of the obligations set forth therein, and not contract termination.

245. Moreover, the Panel notes that at the time of termination of the Employment Contracts, the AIFF had only suspended the ongoing football season. Furthermore, the employment relationships between the Club and the Players were established in the Employment Contracts for an additional season, i.e. until 30 June 2021.

246. As noted above, the Panel further points out that at the time the Appellant terminated the Employment Contracts there were unpaid salaries for the period from December 2019 to March 2020 and, thus, there were outstanding payments already before the outbreak of the COVID-19 pandemic and before the relevant termination. Therefore, the COVID-19 pandemic cannot be considered as a justification for having failed to pay such salaries.

247. In conclusion, and in consideration of all the foregoing, the Panel finds that the Club terminated unilaterally and prematurely the Employment Contracts with the Players without just cause.

248. In view of the above, the Panel notes that the Players' salaries for the month of December 2019, January 2020, February 2020 and March 2020 – in total amounting to USD 26,000 with respect to Mr Sandro Rodriguez Felipe, USD 24,500 with respect to Mr Adolfo Miranda Araujo and USD 24,500 with respect to Mr Roberto Eslava Suarez – were outstanding at the time of the unilateral termination of the Employment Contracts made by the Appellant and, therefore, the latter is responsible to the pay such outstanding amounts in favour of the First Respondents, as correctly determined by the FIFA DRC.

C. What is the compensation due, if any?

249. After having ascertained that the Club terminated the Employment Contracts without just cause, it shall now be determined the amount of compensation payable by the Appellant to the First Respondents.

250. Indeed, Article 17 of the FIFA RSTP reads as follows:

> "*1. In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period*".

251. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

252. Indeed, the parties to a contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth by Article 17 of the FIFA RSTP.

253. Taking all of the above into consideration, two basic principles have been recognised in the jurisprudence of CAS and FIFA DRC:

(i) If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 of the FIFA RSTP;

(ii) The objective calculation shall be made by the CAS based on the principle of so-called "positive interest", meaning that "*it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly*" (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (eds.), "Sport Governance, Football Disputes, Doping and CAS arbitration", Colloquium, 2009, p. 249).

254. Moreover, it is important to underline that other criteria could be considered in order to determine fair compensation, such as the so-called "specificity of sport".

255. CAS jurisprudence has stated that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable [...]"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

256. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community [...]. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, paras. 233-240).

257. To sum up, the Panel might consider it to be a negative point when a party engages in conduct, which is in blatant bad faith, or terminates a contract for its own mere interests. On the contrary, the Panel might consider it to be a positive point when a party has

displayed exemplary behaviour throughout the duration of a contract and possibly even when it came time to end it.

258. Hence, it shall firstly be clarified whether the Employment Contracts contained a provision according to which the Parties agreed on a certain amount of compensation to be paid in case of breach of contract. In this respect, the Panel finds that the Employment Contracts do not include a compensation clause.

259. Therefore, the compensation to be awarded in favour of the First Respondents shall be determined in compliance with the parameters set forth under Article 17 of the FIFA RSTP.

260. The Panel deems essential to take into account both the Employment Contracts and the new employment contracts (if any). In fact, the remuneration under a new employment contract shall be taken into account in the calculation of the amount due as compensation in accordance with the general obligation of any player to mitigate their damages.

261. The official ending date of the Employment Contracts between the Appellant and the First Respondents was 30 June 2021 and, thus, all the amounts eventually received by the Players deriving from new contracts until the date of 30 June 2021 shall be considered for the purpose of the calculation hereof.

262. The FIFA DRC, in order to determine the basis of the amount of compensation to be granted in favour of the First Respondents, correctly referred to the remaining value of each of the Employment Contracts up to the original date of termination (*i.e.* 30 June 2021) with respect to the money that each Player failed to receive due to the early termination of their relationship with the Club.

263. With respect to Mr Rodriguez Felipe, the remaining salaries amount to USD 97,500.

264. The Panel notes that Mr Rodriguez Felipe did not execute a new employment agreement after the termination of his Employment Contract with the Club. The Panel further points out that, pursuant to CAS jurisprudence, the duty to mitigate damages shall be regarded in accordance with the general principle of fairness, which implies that, after a breach by the club, the player must act in good faith and seek other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him (CAS 2018/A/6029; CAS 2016/A/4852; CAS 2016/A/4769; CAS 2016/A/4678).

265. In this case, the Panel believes that the Appellant did not demonstrate that the Player deliberately and intentionally decided not to enter into any new contract and, thus, finds that the amount of compensation of USD 97,500 granted by the FIFA DRC with the Appealed Decisions is fair and reasonable in accordance with the applicable criteria.

266. Next, considering Mr Miranda Araujo, his remaining salaries amount to USD 105,000.

267. Mr Miranda Araujo signed a new contract with Club Deportivo Atlético Baleares and he received from the new club for the period starting from August 2020 and ending on May 2021 an amount of EUR 45,000 gross, corresponding to EUR 30,639.54 net, per the relevant documentation filed by the Player in the present proceedings. Such amount shall, therefore, be deducted from the residual value of his Employment Contract that was terminated.

268. More precisely, the amount of EUR 30,639.54 shall be converted into USD currency pursuant to the exchange rate applicable at the date of this Award and published by the European Central Bank. At the date of issuance of this decision, the corresponding amount in USD is 32,294.08.

269. The Panel, according to the allegations made by Mr Miranda Araujo, is of the opinion that the accommodation expenses in the Employment Contracts amounting to EUR 7,500 shall not be deducted since it does not represent a salary pursuant to the new contract.

270. Finally, with respect to the Player Mr Eslava Suarez, his remaining salaries amount to USD 97,500.

271. Mr Eslava Suarez first signed a new contract with Club Deportivo Izarra and he received from such new club for the period starting on 1 September 2020 and ending on 31 December 2020 an amount of EUR 6,400. Subsequently, he signed another new employment contract with Club Deportivo Mensajero of Spain and he received from such club for the period starting on 20 January 2021 and ending on 6 June 2021 the amount of EUR 5,500. The total amount of EUR 11,900 shall, therefore, be deducted from the residual value of his Employment Contract that was terminated.

272. More precisely, the amount of EUR 11,900 shall be converted into USD currency pursuant to the exchange rate applicable at the date of this Award and published by the European Central Bank. At the date of issuance of this decision, the correspondence amount in USD is 12,542.60.

273. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Panel considers that the Appellant's appeal is only partially upheld, and the Appellant must pay:

(i) with respect to Mr Rodriguez Felipe, the total amount of USD 97,500, as compensation for breach of contract;

(ii) with respect to Mr Miranda Araujo, the total amount of USD 72,705.92 as resulting from the difference between USD 105,000 and the corresponding amount of USD 32,294.08 deriving from the conversion of EUR 30,639.54 pursuant to paragraph 268 of the present Award, as compensation for breach of contract;

(iii) with respect to Mr Eslava Suarez, the total amount of USD 84,957.40 as resulting from the difference between USD 97,500 and the corresponding amount of USD

12,542.60 deriving from the conversion of EUR 11,900 pursuant to paragraph 271 of the present Award, as compensation for breach of contract.

274. For the sake of clarity, the First Respondents requested the Panel to check whether taxes on their salaries that have already been paid by the Club had been paid. It appears – from the document submitted by the Club – that it did not pay the 2019-2020 taxes.

D. Does the Second Respondent have standing to be sued in the present proceedings?

275. It has now to be determined whether the Second Respondent has standing to be sued in the proceedings hereof.

276. Indeed, the Second Respondent in its Answer affirmed that its involvement in these proceedings is due only to the circumstance that the Appellant challenged the jurisdiction of FIFA DRC. Thus, upon confirmation of the competence of FIFA DRC, the dispute ceases to have a "vertical" component and becomes "horizontal" since there are no requests for relief sought against FIFA with respect to the disputes between the Appellant and the First Respondents.

277. At this respect the Panel notes that the CAS jurisprudence analysed the issue of FIFA's standing to be sued distinguishing between "vertical" and "horizontal" disputes.

278. Indeed, in CAS 2016/A/4838, the panel stated that disputes adjudicated by FIFA bodies can be qualified as "horizontal" disputes in case they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and did not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake.

279. Furthermore, in CAS 2015/A/4000 the panel affirmed that FIFA has no standing to be sued when the dispute is only between two parties and FIFA is involved only due to its role as adjudicating body that issued the appealed decision.

280. In view of the foregoing, this Panel is of the opinion that FIFA has been correctly sued with respect to the "vertical" component of this dispute, i.e. the competence of the FIFA DRC to hear the underlying cases.

281. However, as accurately pointed out by the Second Respondent, once FIFA competence to issue the Appealed Decision has been confirmed and the dispute becomes only "horizontal", it does not have standing to be sued with respect to the contractual dispute between the Appellant and the First Respondents.

IX. INTEREST

282. Pursuant to Article 104(1) of the SCO, "*a debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract.*"

283. The Panel finds that in the cases at stake, a 5% p.a. shall be applied as of 23 May 2020 (the date when the Players filed a complaint before FIFA) until the date of effective payment.

X. COSTS

284. Article R64 para.4 of the CAS Code, which is applicable to this proceeding, provides that:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."*

285. Article R64 para. 5 of the CAS Code provides that:

> *"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall bear them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."*

286. In light of the outcome of these proceedings, in particular the fact that the appeals were only partially upheld, the Panel considers that the costs of the arbitrations, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne 80% by the Appellant and 20% by the Respondents.

287. Furthermore, the Panel considers that the Appellant shall pay a total amount of CHF 3,000 to each of the First Respondents with respect to their legal fees and other expenses incurred in connection with these proceedings. The Panel decides that FIFA will bear its own costs and other expenses incurred in connection with these proceedings, since it is not represented by external lawyers.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Chennai City FC on 2 November 2020 are partially upheld.

2. The decisions issued by the FIFA Dispute Resolution Chamber dated 20 July 2020 are amended as follows:

   (i) with respect to Sandro Rodriguez Felipe the Club shall pay total amount of USD 97,500, plus 5% interest *p.a.,* as compensation for breach of contract;

   (ii) with respect to Adolfo Miranda Araujo the Club shall pay the total amount of USD 72,705.92, plus 5% interest *p.a.,* as compensation for breach of contract;

   (iii) with respect to Roberto Eslava Suarez the Club shall pay the total amount of USD 84,957.40, plus 5% interest *p.a.,* as compensation for breach of contract.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by Chennai City FC.

4. Chennai City FC is ordered to a total amount of CHF 3,000 (three thousand Swiss francs) to Sandro Rodriguez Felipe, CHF 3,000 (three thousand Swiss francs) to Adolfo Miranda Araujo and CHF 3,000 (three thousand Swiss francs) to Roberto Eslava Suarez with respect to their legal fees and other expenses incurred in connection with these proceedings. FIFA shall bear its own costs and expenses in connection with this proceeding.

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

Seat of arbitration: Lausanne, Switzerland
Date: 27 October 2023

Jacopo Tognon
President of the Panel

Petros C. Mavroidis
Arbitrator

João Nogueira Da Rocha
Arbitrator