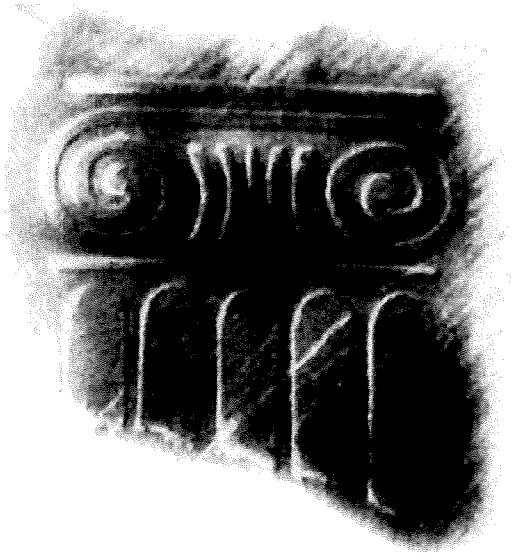
TAS / CAS

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



ARBITRAL AWARD

Pyramids FC, Egypt

v.

Huddersfield Town AFC, Germany

&

Fédération Internationale de Football Association, Switzerland

CAS 2023/A/9419 - Lausanne, December 2023

CAS 2023/A/9419 Pyramids FC v. Huddersfield Town AFC & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

in the arbitration between

Pyramids FC, Egypt

Represented by Mr Rolf Müller, Attorney-at-Law in Zurich, Switzerland

Appellant

and

1/ Huddersfield Town AFC, England

Represented by Mr Jan Schweele, Attorney-at-Law, Berlin, Germany

First Respondent

2/ Fédération Internationale de Football Association (FIFA), Zürich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, Zurich, Switzerland

Second Respondent

I. PARTIES

1. Pyramids FC (the "Appellant" or "Pyramids") is a professional Egyptian football club affiliated with the Egyptian Football Association, which in turn is affiliated with the Fédération Internationale de Football Association. The Club is currently participating in the Egyptian Premier League, which is the tier-1 league of Egyptian football.

2. Huddersfield Town AFC (the "First Respondent" or "Huddersfield") is a professional English football club affiliated with the English Football Association, which in turn is affiliated with FIFA. Huddersfield is currently participating in the English Football League Championship, which is the tier-2 league of English football.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the Single Judge of the Players' Status Chamber of the FIFA Football Tribunal (the "FIFA PSC") on 6 December 2022 (the "Appealed Decision"), the written and oral submissions of the Parties and the evidence adduced. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 10 September 2020, the Appellant and the First Respondent signed a *transfer agreement* (the "Transfer Agreement") regarding the transfer of the Egyptian professional football player Ramadan Sobhi Ahmed (the "Player") from the First Respondent to the Appellant.

6. The Transfer Agreement stated, *inter alia*, as follows:

"[...]
2. In consideration of the permanent transfer of the Player's registration from HTAFC to
the Transferee, the Transferee agrees to pay to HTAFC the guaranteed net sum of £2,500,000 (Two Million Five Hundred Thousand Pounds Sterling) (the "Transfer Fee"),
payable as follows:

(a) £1,000,000 (One Million Pounds Sterling) on or before 10 September 2020;

(b) £750,000 (Seven Hundred and Fifty Thousand Pounds Sterling) on or before 1 January 2021; and

(c) £750,000 (Seven Hundred and Fifty Thousand Pounds Sterling) on or before 1 July 2021.
[...]
3. In addition to the Transfer Fee, in further consideration of the transfer of the Player's registration from HTAFC to the Transferee, the Transferee agrees to pay to HTAFC the following once only net sums up to a maximum aggregate net sum of GBP 500,000 (Five Hundred Thousand Pounds Sterling) on the first occasion they occur during seasons 2020/2021, 2021/2022 and/or 2022/2023:
(a) the sum of GBP 100,000 (one Hundred Thousand Pounds Sterling) upon the Player completing 20 Appearances;
(b) the sum of GBP 100,000 (one Hundred Thousand Pounds Sterling) upon the Player scoring 10 goals in First Team Competitive Matches;
[...]

[...]"

7. On 4 November 2021, the First Respondent initiated proceedings against the Appellant before the FIFA PSC (the "First PSC Claim"). In its claim, the First Respondent sought payment of the third instalment of the Transfer Agreement in the amount of GBP 750,000 plus 5% interest p.a. as from 2 July 2021 and requested to be awarded the amount of GBP 200,000 pursuant to clause 3 (a) and (b) of the Transfer Agreement plus 5% interest p.a. as from 12 November 2021.

8. By email of 13 February 2022, and in the course of the Parties' efforts to reach an amicable solution, the Appellant proposed a "*force majeure clause*" to be included in a possible settlement agreement, arguing, *inter alia*, as follows in its message to the First Respondent:

"[...]
However, [the Appellant] would accept exceptionally to apply the contractual penalty provided in contract (i.e. 10%) if we can agree on the force majeure clause.

In principle, the commencement date of new season 2022/23 in Egypt will start on 15 August 22. As such, [the Appellant] concerns are to fulfil its obligations regarding the second and third payments from the budget of new season 2022/23 not season 2021/22. Accordingly, [the Appellant] proposed a draft for the force majeure clause as provided in the draft. As you will note, [the Appellant] proposed that any postponement for paying the second and third payments due to force majeure shall not exceed: (i): the commencement date of season 2022/23 for the second payment and; (ii): three months after the commencement date of season 2022/23 for the third payment."

9. On 14 February 2022, the First Respondent accepted the wording of the force majeure clause.

10. On 15 February 2022, the First Respondent and the Appellant concluded a settlement agreement (the "Settlement Agreement") containing the above-mentioned clause (Clause 5), thus terminating the procedures regarding the First PSC Claim with no decision passed.

11. The Settlement Agreement stated, *inter alia*, as follows:

"[...]

1. Pyramids shall pay the sum £ 919,567.38 (Nine Hundred and Nineteen Thousand Five Hundred and Sixty-Seven Pounds Sterling and Thirty Eight Cents) (hereinafter, the "Settlement Sum") to Huddersfield via bank transfer, in full and final settlement with regards to the object of the Dispute before the FIFA Football Tribunal with Reference Number FPSD-4526;

(1) The Settlement Sum shall be paid in 3 (three) installments according to the following amounts and payment plan:

a) the first installment of £ 459,783.69 (Four Hundred and Fifty Nine Thousand Seven Hundred and Eighty Three Pounds Sterling and Sixty Nine Cents) shall be paid within 7 business days upon signature of the present Settlement Agreement;

b) the second installment of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) shall be paid on or before 30 August 2022;

c) the third installment of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) shall be paid on or before 30 November 2022;

[...]

2. In the event of delay or incomplete payment of any of the instalments within the stated deadlines, [the First Respondent] shall serve the [the Appellant] with a final notice of default, granting it 10 (ten) additional days to make the due payment. If [the Appellant] fail to remedy the default within the additional deadline granted, the present Settlement Agreement shall be deemed breached by [the Appellant] and all the instalments shall be come due immediately, and the [First Respondent] will be entitled to claim before the competent FIFA dispute resolution body the full outstanding amount of the Settlement Sum, including both the delayed and the not yet due instalments. In addition, [the Appellant] shall be entitled to claim a contractual penalty of 10% on the total outstanding amount due under the present agreement, and a 5% interest p.a. on the contractual penalty amount as of the day of the present Settlement Agreement is breached by [the Appellant].

3. In case [the Appellant] breaches the present Settlement Agreement in accordance with clause 2 above, the applicable interest due on the amounts of the guaranteed transfer fee shall keep accruing as if the present Settlement Agreement had not been

concluded by the Parties, until the date of effective payment of the outstanding debt by [the Appellant].

[...]

5. Subject to providing [the First Respondent] with an official decision from the competent authority in Egypt, in case of the sporting activity in Egypt being suspended, or season 2021/2022 being extended because of a force majeure such as Covid-19 before 30 August 2022, the Parties agreed to re-negotiate, in good faith, the dates of the second and third payment taking into account the effects of the suspension or extension of resolution on the economic situation of [the Appellant]. In all cases, any postponement for paying the second and third payments shall not exceed: (i) the commencement date of season 2022/23 for the second payment and; (ii) three months after the commencement date of season 2022/23 for the third payment. [...]"

12. The total settlement amount of GBP 919,567.38 included the applicable default interest and was reduced by the amount of GBP 53,597, the latter being owed by the Respondent to the Appellant as Solidarity Contribution, as set out in the Settlement Agreement.

13. The Appellant paid the first instalment on 15 February 2022 without any issues.

14. By letter of 28 August 2022 to the First Respondent, the Appellant invoked Clause 5 of the Settlement Agreement, requesting extension of payment of the second and third instalments of the Settlement Agreement by stating, *inter alia*, as follows:

"[...]

In accordance with article 5 of the above mentioned Agreement, in case of extension of the 2021/2022 sports season in Egypt, the parties shall "renegotiate, in good faith, the dates of the second and third installment taking into account the effects of the suspension or extension resolution on the economic situation of Pyramids FC".

Effectively, the Egyptian Football Association ("EFA") on 17 May 2022 extended the 2021/2022 sporting season to end on 30 August 2022. In addition, on 11 August 2022 the EFA announced that the 2022/2023 sporting season shall not start on 1 October 2022, but will be pushed back to 15 October 2022.Therefore, and since the 2021/2022 sports season has been extended on by the EFA, Pyramids FC proposes the following with regards to the payments of the second and third installment:

(a) The payment of the second installment, in the amount of £229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Sterling Pounds and Eighty Five Cents), on the 15th of October 2022, therefore at the beginning of the 2022/2023 season in accordance with article 1 and 5 of the Agreement; and

(b) The payment of the third installment, in the amount of £229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety On Sterling Pounds and Eighty Five Cents), on the 1 January 2023, therefore

3 months after the payment of the second installment in accordance with article 1 and 5 of the Agreement.

We hereby present this offer in good faith, and in the spirit of cooperation between clubs, therefore, we kindly hope that you accept our kind offer."

15. By letter of 8 September 2022 (the "First Default Letter"), the First Respondent rejected the Appellants request and put the Appellant in default, granting a 10-day time limit to remedy the default, stating, *inter alia*, as follows:

"[...]

On 29 August 2022, Pyramids FC sent a notification to Huddersfield Town AFC informing that the season in Egypt had been extended by the Egyptian Football Association until 30 August 2022. However, the season was always scheduled to end by such date, and even if it was not, there is no evidence that any alleged extension is due to a force majeure such as Covid 19.

As a consequence, Clause 5 of the Settlement Agreement is not applicable.

Up to the present date, Huddersfield Town AFC have not yet received any payment from your club with regards to the second installment pursuant to the Settlement Agreement.

In view of the foregoing, the present notification is a formal default notice addressed to Pyramids FC urging your club to proceed with the payment of the overdue 2nd installment of the Settlement Agreement in the amount of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) within 10 (ten) days as from the receipt of this letter, i.e., on or before 18 September 2022, as per clause 2 of the Settlement Agreement [...]"

16. On 26 September 2022 (the "Second Default Letter"), the First Respondent reiterated its position, granting the Appellant an additional 10-day time limit to remedy the default, stating, *inter alia*, as follows:

"[...]

On 29 August 2022, Pyramids FC sent a notification to Huddersfield Town AFC informing that the season in Egypt had been extended by the Egyptian Football Association until 30 August 2022. However, the season was always scheduled to end by such date, and even if it was not, there is no evidence that any alleged extension is due to a force majeure such as Covid 19.

As a consequence, Clause 5 of the Settlement Agreement is not applicable.

Considering the above, Pyramids FC were served with a notice of default on 08 September 2022 and granted 10 (ten) days to make the overdue payment, pursuant to Clause 2 of the Settlement Agreement.

However, up to the present date, Huddersfield Town AFC have not yet received any payment from your club with regards to the second installment pursuant to the Settlement Agreement. As a consequence, the Settlement Agreement is deemed breached by Pyramids FC and all the installments are immediately due, including both the delayed and the not yet due installments, pursuant to Clause 2 of the Settlement Agreement. Moreover, the penalty fee established in Clause 2 of the Settlement Agreement is automatically triggered since 19 September 2022.

According to Clause 1 of the Settlement Agreement, the Settlement Sum was in the total amount of £ 919,567.38. The second and the third installments corresponded to a total sum of £ 459,783.69. The contractual penalty of 10% on the total outstanding amount thus corresponds to the sum of £ 45,978.37.

In view of the foregoing, Pyramids FC is hereby formally served with a final notice of default to proceed with the payment of the remaining Settlement Sum of £ 459,783.69, plus the applicable contractual penalty fee that has been triggered in the amount of £ 45,978.37. within 10 (ten) days as from the receipt of this letter, i.e., on or before 06 October 2022.

The total outstanding amount of 505,762.06 (five hundred and five thousand seven hundred and sixty-two Pounds Sterling and six cents) shall be paid to the following bank account of Huddersfield Town AFC [...]"

B. Proceedings before the FIFA Players' Status Committee

17. On 19 October 2022, the First Respondent lodged a claim before the FIFA PSC, requesting the FIFA PSC to accept the claim and order Pyramids to:

"a) Pay to the Claimant the amount of £ 459,783.69. (four hundred and fifty-nine thousand seven hundred and eighty-three Sterling Pounds and sixty-nine cents), corresponding to the outstanding amount due pursuant to the Settlement Agreement signed between the Parties on 15 February 2022;

b) Pay to the Claimant interest at the rate of 5% p.a. on the amount of £ 750,000.00 as of 02 July 2021 until the date of effective payment

c) Pay to the Claimant interest at the rate of 5% p.a. on the amount of £200,000,00 as of 12 November 2021 until the date of effective payment,

d) Pay to the Claimant the amount of £ 45,978.37 (forty-five thousand nine hundred and seventy-eight Sterling Pounds and thirty-seven cents), corresponding to the penalty fee established in the Settlement Agreement;

e) Pay to the Claimant interest at the rate of 5% p.a. on the amount of £ 45,978.37 as of 19 September 2022 until the date of effective payment.

[...] Moreover, the Claimant requests that the Players' Status Chamber of the FIFA Football Tribunal imposes the sanctions provided for by Art. 12bis of the FIFA RSTP upon the Respondent."

18. In support of its claim, the First Respondent submitted, *inter alia*, that the Appellant's failure to pay the second instalment of the Settlement Agreement triggered the acceleration and penalty clause therein. In addition, the First Respondent argued that interest should be calculated over the amounts requested in the First PSC Claim as from the due dates until the date of effective payment.

19. In its reply to the FIFA PSC, the Appellant submitted, *inter alia*, that the Parties' true intention while drafting Clause 5 of the Settlement Agreement was to adapt the payment dates of the second and third instalments to the fixtures of the Egyptian Premier League Season. In this regard, it was argued that there was indeed a postponement of the Egyptian Premier League 2022/2023, entailing that – when interpretating the "unclear" wording of the said clause – the Appellant should be granted an extended deadline to perform the payments.

20. What the Parties meant by "*force majeure*" was that "*by any reason (not in disposal of the Appellant) the Egyptian Premier Legue season 2021/2022 and 2022/2023 would be postponed*". As such, COVID-19 was only mentioned as an example and there was no need to present further evidence to this extent.

21. The Appellant confirmed having received the default notices from the First Respondent, but at the same time submitted that the acceleration and penalty clauses were not triggered because the second instalment of the Settlement Agreement was not yet overdue.

22. In addition, the Appellant submitted that calculating interest over the original amounts in the First PSC Claim would be excessive and imply the same interest being awarded twice.

23. The FIFA PSC initially analysed whether it was competent to deal with the case with reference to the October 2022 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") and found that it was competent to deal with the matter at stake, which concerns a dispute between two clubs belonging to different members associations.

24. The FIFA PSC further concluded that the July 2022 edition of the Regulations on the Status and Transfer of Players (the "FIFA RSTP") was applicable to the case and referred to the basic principle of burden of proof as stipulated in Article 13 (5) of the Procedural Rules.

25. With regard to the substance of the matter, the FIFA PSC initially noted that the Parties did not dispute that the second instalment provided for in the Settlement Agreement was not paid by the Appellant, but the Parties disputed the date on which such an amount fell due in light of the specific wording of Clause 5 of the Settlement Agreement.

26. Based on the above, the FIFA PSC established that the main issue at stake was to determine when the second instalment of the Settlement Agreement fell due and the possible consequences thereof.

27. In this regard, the FIFA PSC highlighted that the wording of Clause 5 of the Settlement Agreement was clear and unequivocal and needed no interpretation. In particular, and when analysing the clause, the FIFA PSC pointed out that any extension of the deadlines for payment would be subject to (i) the Appellant providing an official decision from a competent authority in Egypt demonstrating that the sporting activity was suspended or the 2021/2022 season was extended due to a force majeure situation; and (ii) the Parties reaching an agreement in good faith as regards the possible extension of the deadlines.

28. Since the Appellant could not establish that any force majeure situation (i.e. suspension of the sporting activity or postponement of the 2021/2022 season in Egypt – and not the 2022/2023 season as claimed by the Appellant) occurred nor that any extension agreement had been concluded, which meant that none of the mentioned conditions were met, the FIFA PSC decided to set aside the Appellants argumentation and determined that the second instalment of the Settlement Agreement should have been paid within the original deadline, i.e., by 30 August 2022.

29. Consequently, on account of all of the above-mentioned considerations, combined with the general principle of *pacta sunt servanda*, the FIFA PSC established that the acceleration and penalty clause was in fact triggered and therefore decided that the Appellant was liable to pay to the First Respondent outstanding remuneration of GBP 459,783.69 as well as the contractual penalty of GBP 45,978.37, which the FIFA PSC deemed reasonable and proportionate in line with the well-established jurisprudence of the Football Tribunal.

30. Notwithstanding the latter, the FIFA PSC determined that the default interest of 5% p.a. should only apply to the amounts included in the Settlement Agreement and not the amounts mentioned in the Transfer Agreement as the Parties novated the debt by the time the Settlement Agreement was signed. Furthermore, the FIFA PSC decided that no interest was applicable to the contractual penalty in compliance with the principle of *ne bis in idem*.

31. Furthermore, the FIFA PSC decided that, in the event that the Appellant failed to pay the amount due to the First Respondent within 45 days of the moment when the First Respondent communicated the relevant bank details to the Appellant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods would be imposed on the Appellant in accordance with Article 24bis (2), (4) and (7) of the FIFA RSTP.

32. On 6 December 2022, the FIFA PSC rendered the Appealed Decision and decided that:

"1. The claim of the Claimant, Huddersfield Town FC, is partially accepted.

2. The Respondent, Pyramids FC, has to pay to the Claimant the following amounts:

- *GBP 229,891.85 as outstanding remuneration plus 5% interest p.a. as from 31 August 2022 until the date of effective payment;*

- *GBP 229,891.85 as outstanding remuneration plus 5% interest p.a. as from 19 September 2022 until the date of effective payment; and*

- *GBP 45,978.36 as contractual penalty.*

3. Any further claims of the Claimant are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount Is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (Including -3;1 applicable interest) is still not made by the end of the three entire and consecutive registration periods.

6. The consequences shall only be enforced at the request. of the Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations an the Status and Transfer of Players,

7. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of these proceedings (cf. note relating to the payment of the procedural costs below)."

33. On 6 January 2023, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 27 January 2023, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.

35. By letter of 9 February 2023 to the CAS Court Office, FIFA stated, *inter alia*, as follows:

[...] In particular, we note that, in its statement of appeal, the Appellant has called FIFA as a respondent. In this regard, we would like to emphasize that the present proceedings relate to a dispute between the Appellant and Huddersfield Town AFC (the First Respondent) regarding some outstanding amounts and does not concern FIFA. In particular, we have to stress that FIFA, more precisely the Players' Status

Chamber ("PSC"), acted in the matter at stake in its role as the competent deciding body of the first instance and was not a party to the dispute.

Moreover, we would like to emphasise that the appealed decision of the PSC dated 6 December 2022 is not one of disciplinary nature.

In this sense, we would like to clarify that the PSC lacked of any discretion to apply article 24 of the FIFA Regulations on the Status and Transfer of Players, (by means of which FIFA's decision making bodies – i.e. FIFA DRC or FIFA PSC – have powers to decide on the consequences for any club or player if they fail to comply with a monetary decision issued by the said decision making bodies), as the relevant provision explicitly stipulates that such consequences shall be included in the decision.

Therefore, the PSC decided on the substance of the contractual dispute between the parties (or so called "horizontal dispute") and at the same time on the fixed consequences of the failure to comply with the monetary part of such decision. The imposition of the fixed sanctions in accordance with article 24 RSTP is fully dependent on the outcome of the horizontal dispute, therefore, can only be challenged together with the merits of the case.

Equally, it should be noted that the appeal in question does not appear to contain any substantial request against FIFA.

Therefore, we deem that FIFA's presence in the present affair is not necessary, and, in consequence, we request that FIFA be excluded from the procedure at stake. If this should not be the case, we reserve our right to claim against the Appellant for the legal costsincurred by FIFA as a consequence of the unnecessary involvement in the presentprocedure. [...]"

36. By letter of 9 February 2023, the CAS Court Office stated, *inter alia*, as follows:

"[...] *I note that FIFA considers not to be a respondent in these arbitral proceedings and, accordingly, requests to be removed from such proceedings. In light of the foregoing, I invite the Appellant, by 13 February 2023, to state whether it maintains or withdraws its appeal against FIFA. In the absence of an answer within the given deadline, FIFA shall still be considered as a party to these arbitral proceedings. [...]*"

37. On 16 February 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

38. By letter of 21 February 2023, the CAS Court Office informed the Parties as follows:

"*I refer to the CAS letter of 9 February 2023 and note that the Appellant did not indicate whether it maintained or withdrew its appeal against FIFA, within the given deadline. Therefore, pursuant to such letter, FIFA shall remain as a respondent in this matter.*"

To which letter FIFA, on the same date, responded, *inter alia*, as follows:

"[...] *In this respect and reiterating that FIFA's involvement is not necessary in the present proceedings, please note that we do not oppose (i) to establish English as the language of these proceedings and (ii) to refer the present matter to a Sole Arbitrator. Please also note that we reserve our right to claim against the Appellant for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure.* [...]"

39. By letter of 2 March 2023 from the CAS Court Office, the Parties received a copy of the "Arbitrators' Acceptance and Statement of Independence" form completed by the Sole Arbitrator, who had been appointed as such by the Division President. The Parties were further informed that any challenge would have to be brought within seven days after the grounds of the challenge had become known pursuant to Article R34 of the CAS Code.

40. On 19 April 2023 and 9 June 2023, and after the suspension of the procedure due to negotiations between the Appellant and the First Respondent, FIFA and the First Respondent, respectively, filed their Answers in accordance with Article R55 of the CAS Code.

41. On 20 June 2023, without having received any challenge against the suggested Sole Arbitrator from any party within the deadline provided for in Article R34 of the CAS Code, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.

42. By letter of 26 June 2023, the Appellant forwarded a challenge against the Sole Arbitrator, referring to the information provided by the latter when accepting the nomination.

43. By letters of 10 and 11 July 2023, respectively, the First Respondent and FIFA objected to such a challenge, *inter alia* submitting that it was inadmissible and only submitted in an attempt to delay the procedure. Nevertheless, on 19 July 2023, the Appellant informed the CAS Court Office that it maintained its challenge.

44. By Decision rendered by the Challenge Commission of the International Council of Arbitration for Sport on 25 July 2023, it was ruled as follows:

1. *The petition for challenge against the appointment of Mr Lars Hilliger filed on 26 June 2023 by Pyramids FC is inadmissible.*

2. *The costs of this Order shall be determined in the final award or in any other final disposition of this arbitration.*

45. By letter of 15 August 2023, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter and that the hearing should be conducted by videoconference.

46. Moreover, on the same date, FIFA was invited to provide the CAS with a copy of the complete case file related to this appeal, which FIFA did by letter of 18 August 2023, which file was forwarded to the other Parties on the same date.

47. By letter of 29 August 2023, the Appellant forwarded an unsolicited Witness Statement of Mr Eid, the Appellant's CEO.

48. By letter of 1 September 2023, the Respondents were invited to address the admissibility and the content of this Witness Statement.

49. By letters of 4 and 5 September 2023, respectively, FIFA and the First Respondent objected to the filing of Mr Eid's Witness Statement, and by letter of 5 September 2023, the Parties were informed that the Sole Arbitrator had decided not to admit the said Witness Statement into the file, given the Respondents' objections and considering that there are no exceptional circumstances pursuant to Article R56 of the CAS Code.

50. All Parties duly signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.

51. On 1 November 2023, a hearing was held by videoconference.

52. In addition to the Sole Arbitrator, Mr Fabien Cagneux, Managing Counsel, and the following persons attended the hearing:

53. For the Appellant:

Mr Rolf Müller, Counsel

Mr Zani Dzaferi, Counsel

For the First Respondent

Mr Thomás Prested Bosak, Counsel

Mr Fernando Blázquez Gonzáles, Counsel

For FIFA:

Mr Roberto Nájera Reyes, Senior Legal Counsel

54. At the outset of the hearing, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator.

55. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

56. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent

deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

57. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

58. In its Appeal Brief, the Appellant submitted the following request for relief:

"In acceptance of the present appeal

1. *The [Appealed Decision] shall be annulled and the claim of the First Respondent of the 19th of October 2022 rejected.*
2. *The costs and compensation shall be imposed to the Respondents.*"

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

- It is publicly known that the 2021/2022 season in Egypt lasted until 30 August 2022.

- Thus, the condition set out in Clause 5 of the Settlement Agreement was fulfilled, based on which the original payment dates are no longer applicable.

- Furthermore, it is undisputed that the start of the Egyptian Premier League season 2022/2023 was postponed from 1 October 2022 to 15 October 2022, and moreover, when signing the Settlement Agreement, the Appellant even assumed that the Egyptian Premier League season 2022/2023 was going to start on 15 August 2023.

- The FIFA DRC was wrong in finding that the renegotiation of the payment dates was an additional condition for amending the payment dates for the second and third instalments under the Settlement Agreement.

- Renegotiating the payment dates was never a condition, and Clause 5 itself makes it clear that the original payment dates would no longer be applicable in case the sporting activity in Egypt would be suspended or season 2021/2022 would be extended because of a force majeure event such as COVID-19 before 30 August 2022.

- However, Clause 5 of the Settlement Agreement was not only limited to force majeure in the form of COVID-19, but also to any delays which were beyond the control of the Appellant.

- As such, the FIFA PSC established in the Appealed Decision not only the facts of the case contrary to the file, but also violated the content of the Settlement Agreement.

- The Appellant cannot be expected to provide an official decision from the competent authority in Egypt, which would only be required if nothing was publicly announced. The opposite would be an abuse of rights and excessive formalism.

- Moreover, it was not up to Appellant to prove that the two clubs reached an agreement regarding new payment dates for the mere reason that the original dates were no longer applicable.

- On the contrary, it is up to the First Respondent to prove that an agreement was made between the two clubs in order to substantiate the latter's alleged claim for payment.

- The intention of the Appellant and the First Respondent when drafting Clause 5 of the Settlement Agreement was to adapt the payment dates of the second and third instalments to the fixtures of the Egyptian Premier League seasons – not only 2021/2022, but also 2022/2023. A postponement or extension of the Egyptian Premier League season 2021/2022 would consequently postpone the start of the Egyptian Premier League season 2022/2023.

- Obviously, the Parties deemed it unnecessary to expressly mention the postponement of the Egyptian Premier League season 2022/2023 as well because it was logical that a postponement of the Egyptian Premier League season 2021/2022 would consequently postpone the 2022/2023 season as well.

- The intention of the Parties, especially the intention of the Appellant, was to be able to allocate funds from the new season's budget in order to proceed with the payments, which the First Respondent was explicitly informed about before the signing of the Settlement Agreement.

- Based on this common understanding, Clause 5 was included in the final Settlement Agreement.

- According to Article 18 of the Swiss Code of Obligations (the "SCO"), the chosen words of the Parties are irrelevant. Relevant is solely what the Parties intended to rule. Even if FIFA should take the point of view that the Settlement Agreement contains a gap, such a gap has to be filled by the FIFA, taking into consideration what the parties would have ruled if they had known about such a gap in the Agreement.

- Thus, the Settlement Agreement has to be interpreted.

- With regard to an interpretation of an agreement, the FIFA would have to take into account how the First Respondent should have understood Clause 5 in good faith.

It is clear that the Parties would have expressly mentioned the postponement of the Egyptian Premier League season 2022/2023 if they had known there might be a gap or need of interpretation or any discussions with regard to Clause 5 of the Settlement Agreement.

- The common will of the Appellant and the First Respondent was to renegotiate the payment dates of the second and third instalments of the Settlement Agreement and adapt them to the fixtures/game plan of the season 2022/2023. This becomes particularly clear by the following reference to the Egyptian Premier League season 2022/2023 in Clause 5 of the Settlement Agreement:

  "In all cases, any postponement for paying the second and third payments shall not exceed:
  (i): the commencement date of season 2022/2023 for the second payment and;
  (ii): three months after the commencement date of season 2022/2023 for the third payment."

- The Appellant even proposed new payment dates to the First Respondent in line with this provision, and the Appellant never tried to exempt itself from payment of the second and third instalments.

- Thus, it is clear that any scenario which would postpone the start of the season 2022/2023 was captured in Clause 5 of the Settlement Agreement (no matter whether it was due to a suspension of the season 2021/2022 or related to the COVID-19 pandemic).

- The First Respondent perfectly knew this and knew in good faith the understanding of the Appellant and needed to understand Clause 5 in good faith as described above, especially as the First Respondent agreed to the respective clause after receiving the explanations of the Appellant.

- As it is clear then that the first condition was fulfilled in case the season 2022/2023 was delayed, which was in fact the case, FIFA therefore not only established the facts of the case contrary to the files and, thus, arbitrarily, but also violated the will of the parties.

- Moreover, by not taking into consideration the Appellant´s submissions, FIFA violated the Appellant's right to be heard.

- Based on the above, the Appealed Decision was wrong in finding that the acceleration and penalty clause of the Settlement Agreement was triggered.

- The First Respondent was not entitled to send a default notice to the Appellant as the latter was not in default on any payments.

- Instead, the First Respondent was obligated to renegotiate the payment dates for the second and third instalment pursuant to the Settlement Agreement, and,

accordingly, it was in fact the First Respondent who acted against the principle of *pacta sunt servanda*.

- By considering that the default notices sent by the First Respondent would have fulfilled the requirements set out in Clause 2 of the settlement agreement, FIFA is once again establishing the facts of the case contrary to the files and is violating Clause 5 of the Settlement Agreement since the Appellant was not default according to Clause 5.

B. The First Respondent

60. In its Answer, the First Respondent submitted the following requests for relief:

"a) That the present appeal be rejected in totum;

b) That the Appealed Decision is confirmed in totum;

c) That the Appellant is ordered to bear the costs of the arbitration;

d) That the Appellant is ordered to pay a contribution towards the First Respondent's legal fees and other expenses in the present and previous arbitration, in an amount deemed proportionate by the Sole Arbitrator."

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

- It is undisputed that the second and third instalments of the Settlement Agreement are due and outstanding, and the Appellant, in its Appeal Brief, "*does not contest to be obligated to pay to the First Respondent*" the outstanding instalments.

- Thus, the Appellant's obligation to pay is undisputed and, thus, outside the scope of these proceedings.

- Moreover, the Appellant has no grounds to claim that the provisions of Clause 5 of the Settlement Agreement have been fulfilled in order to prevent the application of the payment of the penalty fee and interest on the still outstanding payments.

- The Settlement Agreement establishes a contractual penalty fee of 10% of the total outstanding amount due, and 5% interest p.a. on the contractual penalty amount as of the day the agreement was breached by the Appellant.

- The Appellant's allegation that the sporting season 2021/2022 had been extended in Egypt by the EFA until 30 August 2022 was never corroborated by any evidence of this being a new extended end date of the said season for reasons of force majeure.

- However, the sporting season 2021/2022 in Egypt was scheduled to end on 30 August 2022, which can be confirmed by the evidence generated within the FIFA TMS, uploaded by the EFA.

- It was only the 2022/2023 season in Egypt that had its start delayed from 1 October 2022 to 15 October 2022, which is not foreseen in the Settlement Agreement as a just cause for modifying the due dates of any payments.

- Such a delay of the start of the 2022/2023 season in Egypt does not constitute a force majeure event under Clause 5 of the Settlement Agreement.

- The wording of Clause 5 of the Settlement Agreement reflects the contractual Parties' clear intention and is clear and unequivocal and, therefore, does not require any interpretation other than the literal meaning thereof.

- The Appealed Decision correctly confirmed the conditions required for an extension of deadlines of any payments according to the said clause:

  "*While analysing such provision, the Single Judge considered that the wording of the clause is clear and unequivocal, hence does not need to be interpreted (in claris non fit interpretatio). In particular, he [...] acknowledged that any extension of the deadlines for payment would be subjected to (i) the Claimant providing an official decision from a competent authority in Egypt demonstrating that the sporting activity was suspended or the 2021/2022 season was extended due to a force majeure situation; and (ii) the parties reaching an agreement in good faith.*"

- The actual end date of the 2021/2022 season (i.e. 30 August 2022) is not in dispute.

- The dispute arose because the Appellant alleged that this date was not the original end date of the said season, without providing any decision or order from the competent Egyptian authority to corroborate the allegation that 30 August 2022 was an extended end date and that such an extension was due to a force majeure situation.

- According to the long-standing and well-established jurisprudence of the CAS, "*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 the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them*" (CAS 2021/A/7673 and 2021/A/7699, par. 3)

- It is evident and undisputed that the Appellant never provided evidence to prove that 30 August 2022 was an extended end date and that such an extension was due to a force majeure situation.

- Considering that the Appellant failed to comply with the above-mentioned condition, as confirmed by the Appealed Decision, the Parties were not obliged to renegotiate the deadlines for payment of the second and third instalments of the Settlement Agreement.

- Moreover, the First Respondent agrees with the Appealed Decision, which states that *"(...) in case the parties intended to set any other condition for the amendment of the time limits such as suggested by the* [the Appellant], *they should have done so in writing – especially when considering that the amount claimed already arises from a previous debt / claim lodged before the PSC in 2021."*

- In any case, the wording of Clause 5 was included in the Settlement Agreement in the exact terms as proposed by the Appellant's legal representative, which can therefore only be understood to mean that, if the true intention of the Appellant was to pay the second and third instalments of the Settlement Agreement with the resources from the budget of the 2022/2023 season, it should have proposed a draft Settlement Agreement in such terms – which could be accepted by the First Respondent or not.

- For the sake of argumentation, in the unlikely event that the CAS understands that the wording of Clause 5 of the Settlement Agreement requires interpretation, the principle *contra proferentem* must be considered, as a last resort for interpretation, according to the jurisprudence of the CAS, which establishes that, "*pursuant to the principle of contra proferentem, any unclear wording should be interpreted against the author of the wording.*" (CAS 2015/A/4153).

- Considering that the Appellant proposed the wording of Clause 5 of the Settlement Agreement that was adopted in its final version, even if the wording would be deemed unclear, it should be interpreted against the Appellant, as the drafter of such a clause, in compliance with the rule of *in dubio contra stipulatorem.*

- Therefore, considering that the Appellant failed to prove that the season 2021/2022 in Egypt was suspended or extended and, importantly, that such an alleged extension was due to a *force majeure* situation, and since the postponement of the start of the 2022/2023 season was a not a reason, as per the Settlement Agreement, to re-schedule the due dates of the second and third instalments, it is evident that Clause 5 of the Settlement Agreement was not applicable and, consequently, the penalty fee established in Clause 2 of the Settlement Agreement was duly activated.

- Based on the above, the Appellant's appeal must be fully rejected and the Appealed Decision must be confirmed.

C. FIFA

62. In its Answer, FIFA requested the CAS to issue an award on the merits:

"(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;

(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."

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

- The present dispute revolves around the breach of the Settlement Agreement signed between the two clubs and, more specifically, the issue of whether the Appellant has to pay the amounts provided for in the Appealed Decision.

- Consequently, the dispute is exclusively of a horizontal nature.

- In this regard, it should firstly be recalled that according to the Swiss Federal Tribunal's jurisprudence, "*the presence of joint defendants does not affect the plurality of the cases and the parties. The joint defendants remain independent from each other*".

- Moreover, according to Swiss law and the well-established CAS jurisprudence in arbitration proceedings, a party has standing to be sued ("*légitimation passive*") only if it has some stake in the dispute because something is sought against it and it is personally obliged by the disputed right.

- When speaking about the standing to be sued in an appeal procedure against a FIFA PSC or FIFA DRC decision, the FIFA RSTP are silent on the issue, and therefore one must resort to Swiss law, which applies subsidiarily. In this sense, even though Article 75 of the Swiss Civil Code has consistently been interpreted by the Swiss legal doctrine and jurisprudence to mean that it is the association that has capacity to be sued, this article "*does not apply indiscriminately to every decision made by an association. Instead, it must be determined in every case whether the appeal against a certain decision by an association falls under Art. 75 Swiss Civil Code, i.e. whether the prerequisites of Art. 75 Swiss Civil Code are met in a specific individual case. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. [...] A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties*".

- The jurisprudence of the CAS supports the above-mentioned scholarly interpretation, e.g. *CAS 2006/A/1192.*

- The FIFA PSC and/or the FFIA DRC offer a dispute resolution system where FIFA is not a party but a neutral entity that is called to settle a strict contractual dispute between its indirect members in a matter that does not concern FIFA's relationship with one of those indirect members. Furthermore, this neutral position is not changed by the fact that the Appellant has the chance to have the case

reviewed by the CAS as a result of FIFA's recognition of CAS jurisdiction in the FIFA Statutes.

- The jurisprudence of CAS panels that have dealt with the question of FIFA's standing to be sued distinguishes between the so-called "horizontal" and "vertical" disputes. Whilst in "vertical" disputes, the decision of the association "*shapes, alters or terminates*" the membership relationship between itself and the member concerned whereas "horizontal" disputes "*originate in a legal relationship amongst individual members*".

- Accordingly, the Panel in CAS 2015/A/4000reasoned as follows: "*According to the well-established CAS jurisprudence (...), FIFA has no standing to be sued where it is only involved in the dispute between two parties (such as a player and a club as in the present case) merely as the adjudicating body having issued the appealed decision and the parties cannot bring an actual claim against FIFA.*"

- In the present case, the Appellant is requesting the CAS to "*annul*" the Appealed Decision and to reject Huddersfield's claim before the FIFA PSC, but in doing so, fails to explain why FIFA was called as a respondent when it is evident that FIFA has nothing directly at stake.

- As can be noted from the Appellant's requests for relief, it is clear that all requests directly concern the contractual relationship existing between the Appellant and the First Respondent and the consequences arising from the breach thereof. Therefore, it must be understood to mean that these requests for relief are solely directed against the First Respondent, and FIFA has only an indirect involvement due to its performance as a first-instance decision-making body.

- In this sense, the panel in CAS 2007/A/1287 established that when merely acting as the competent deciding body of the first instance in a dispute between two or more parties regarding transfer or contractual matters, FIFA should not, in principle, be named as a respondent in the appeal procedure. Indeed, FIFA cannot be considered as the "*passive subject*" of the claim brought before the CAS by way of appeal against its decision, as its rights are not concerned with the relief sought by the appellant(s). It is hence clear that FIFA does not have any standing to be sued.

- As such, FIFA has no standing to be sued in relation to the requests for relief of the Appellant.

- Furthermore, even though the Appealed Decision foresees disciplinary consequences for its non-compliance with the terms of Article 24 of the RSTP, this case cannot affect FIFA's lack of standing to be sued in any way as this case remains a purely contractual dispute.

- It must be recalled that the FIFA RSTP have introduced a mechanism via its Article 24 in order to tackle potential dilatory tactics of the parties condemned to pay a certain amount of money to another party as a result of a decision issued by,

inter alia, the FIFA PSC. The aim of this article is to speed up the entire dispute resolution procedure without unnecessary delays.

- Article 24 of the FIFA RSTP makes it clear that the various decision-making bodies of FIFA are to decide on the substance of the (contractual) dispute and, at the same time, must include the consequences of the failure to comply with such decision (emphasis added by the Second Respondent). In other words, the consequences of the failure to pay the relevant amounts in due time will automatically be part of the decision as to the substance of the dispute, and there is no room for discretion: the provision explicitly stipulates that "*such consequences shall be included in the findings of the decision*" (emphasis added by the Second Respondent).

- As such, the possible consequences are a mandatory and indispensable part of the decision as to the substance thereof, and the FIFA PSC will not be in a position to refuse their inclusion. Therefore, if a party – a club or a player – is instructed to pay to another party – a club or a player – a specified sum of money, the consequences in case of non-compliance provided for in Article 24 RSTP will always be automatic.

- Thus, the relevant decision-making authority, the FIFA PSC or the FIFA DRC, as the case may be, does not have any scope of discretion with regard to the imposition of the consequences in case of non-compliance provided for in Article 24 of the RSTP. It is not possible for them to hold a separate discussion when assessing, analysing and adjudicating the dispute between the parties in this regard. If they find that a party has to pay a sum of money to the counterparty, the judgement must mandatorily include the fixed consequences relating to potential non-compliance.

- However, despite the automatic inclusion of the consequences in the relevant decision, their implementation depends on a number of circumstances that are never present at the time a decision is issued. According to Article 24 of the RSTP, the registration ban (for a club) or restriction on playing in official matches (for a player) will become applicable only if the due amounts are not paid within the 45-day time period and subject to the creditor requesting the implementation of the consequences after having duly complied with the pertinent formal requirement of providing the debtor with the relevant bank details and may be lifted as soon as the total debt is paid.

- Therefore, in the present appeal, the consequences of Article 24 of the RSTP (i.e. the transfer ban) will only be implemented in case of the Appellant's failure to comply with the Appealed Decision.

- In other words, the implementation of the consequences of failing to pay the relevant amounts within the prescribed deadline depends at all times, *inter alia*, on the Appellant's choice to comply with its obligations established in the Appealed Decision, and at this stage, they are merely hypothetical.

- Any implementation of the potential sanctions on the Appellant is subject to a request by the First Respondent, and a subsequent decision ordering the implementation of the consequences must be issued by FIFA, which decision will be appealable before the CAS, if so warranted.

- Based on that, it is obvious that the Appellant would only have standing to claim something against FIFA solely after the implementation of the foreseen consequences. In other words, the Appellant does not have standing to sue against FIFA because the Appellant does not have an interest worthy of protection or a legitimate interest (at least with respect to FIFA) since (i) it is not sufficiently affected by the Appealed Decision and (ii) there is no tangible interest at stake because the relevant consequences are purely hypothetical at this moment.

- With regard to the arbitration costs and the legal expenses incurred by FIFA, it must be recalled that FIFA explained the aforementioned position from the outset of the procedure and requested to be excluded from this arbitration due to its unnecessary involvement. Furthermore, FIFA reserved its right to claim against the Appellant for the legal costs it would incur in case the Appellant decided to insist on FIFA's pointless participation.

- Consequently, FIFA requests the CAS to be awarded a contribution to its legal costs incurred in these proceedings due to this unjustified participation.

V. JURISDICTION

64. Article R47 of the CAS Code provides, *inter alia*, as follows:

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

65. With respect to the Appealed Decision, CAS' jurisdiction derives from Article 57 (1) of the FIFA Statutes. Moreover, Clause 11 of the Settlement Agreement states as follows:

"*Any dispute arising between the parties in relation to this Agreement will be submitted exclusively to the competent FIA Dispute Resolution Body. Furthermore, the parties recognize the eligibility of the Court of Arbitration for Sport (CAS), as ruled by both FIFA Statutes and the CAS Code of Sports-related Arbitration, to hear the dispute as an appeal body. The panel of the arbitration shall be composed of a Sole Arbitrator and the language of the proceedings shall be English.*"

66. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the said jurisdiction when signing the Order of Procedure.

67. It follows that the CAS has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

68. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document.*"

69. It follows from Article 57 (1) of the FIFA Statutes that:

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

70. The grounds of the Appealed Decision were notified to the Appellant and the First Respondent on 6 January 2023, and the Appellant's Statement of Appeal was lodged on 27 January 2023, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 58 of the FIFA Statutes, which is not disputed.

71. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

72. It follows that the appeal is admissible.

VII. APPLICABLE LAW

73. Article R58 of the CAS Code provides 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.*"

74. Article 56 (2) of the FIFA Statutes determines the following:

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

75. The Sole Arbitrator further notes that clause 10 of the Settlement Agreement provides that "*this Settlement Agreement is ruled and governed exclusively by the current FIFA*

Regulations on the Status and Transfer of Players and, with Swiss law applying subsidiarily only."

76. Based on the above, and considering that the Parties do not dispute their applicability, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

77. As a preliminary issue, the Sole Arbitrator notes that FIFA requests to have the appeal against it dismissed, arguing that it has no standing to be sued with regard to Appellant's requests for relief and that the only correct respondent in this appeal is the First Respondent.

78. During the hearing, neither the Appellant nor the First Respondent submitted any argument with regard to said request.

79. The Sole Arbitrator initially notes that the question of whether or not a party has standing to sue (or to be sued) is – according to well-established CAS jurisprudence (cf. CAS 2020/A/6694; CAS 2016/A/4602; CAS 2013/A/3047; 2008/A/1639) – an issue of substantive law.

80. As such, the Sole Arbitrator refers to Article 75 of the Swiss Civil Code (the "SCC"), which reads as follows:

"*Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such regulation in court within one month of learning thereof.*"

81. Although the wording of Article 75 of the SCC is ambiguous with regard to challenges against decisions made by an association other than resolutions of a general assembly, it is undisputed that the said provision applies *mutatis mutandis* to decisions of other organs of the association. The wording of Article 75 of the SCC implies that an appeal, in principle, must be directed against the association that rendered the challenged decision (cf. BGE 136 III 345, no. E.2.2.2; RIEMER, BK-ZGB, Art. 75, no. 60; SCHERRER/BRÄGGER, BSK-ZGB, Art. 75, no. 21).

82. However, the CAS jurisprudence allows for an exception to the rule above, in particular where the appealed decision is not of a disciplinary nature, *i.e.* where the sports association merely acts as an adjudicatory body in relation to a dispute between its members. Thus, when deciding who has a standing to be sued, CAS panels proceed by a balancing of the interests involved and by taking into account the role assumed by the association in the specific circumstances. Consequently, one must ask whether a party "*stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law*" (cf. CAS 2017/A/5227, para. 35). Similarly, the CAS panel in 2015/A/3910 held as follows:

"*[T]he Panel holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on basis of a weighing of the interests of the persons affected by said decision. The question, thus, is who [...] is best suited to represent and defend the will expressed by the organ of the association.*" (para. 138).

83. In the present case, and based on the Appellant's submissions, the Sole Arbitrator finds that the appeal is directed only against the findings of the FIFA PSC on the contractual and monetary dispute between the Appellant and the First Respondent.

84. It is further noted that the FIFA PSC only acted in its adjudicatory capacity insofar as it decided the contractual dispute between the Parties, *i.e.* by deciding that the Appellant has to pay a certain amount to the First Respondent, which is a so-called horizontal dispute.

85. As such, the First Respondent is the only party with standing to be sued with regard to the payment by the Appellant, and the Sole Arbitrator is free to adjudicate this issue on a *de novo* basis.

86. The fact that the FIFA PSC included a potential application of Article 24 of the FIFA RSTP in the Appealed decision does not have as a consequence that FIFA has standing to be sued, not least since any concrete application of the potential sanctions set out in accordance with the said article, as the case may be, is subject to a subsequent formal decision by FIFA upon the request of the First Respondent.

87. Furthermore, and for the sake of good order, the Sole Arbitrator notes that the Appellant's submissions regarding FIFA's violation of the Appellant's right to be heard by allegedly not taking into consideration the Appellant's submissions filed before FIFA similarly does not have as a consequence that FIFA has any standing to be sued. Moreover, and without going into the merits of the said allegation, the Sole Arbitrator notes that in any event that the full power of review of the Panel before the CAS under Article R57 (1) of the CAS Code would in principle cure any procedural violations that allegedly occurred in prior proceedings (see, *ex multis*, CAS 2011/A/2594, para. 41, CAS 2018/A/5853, para. 115, CAS 2021/A/8256, paras. 133 *et seq.*).

88. Based on the above, the Sole Arbitrator finds that FIFA has no standing to be sued in this appeal.

89. With regard to the facts of the case, the Sole Arbitrator initially notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that on 15 February 2022, the Appellant and the First Respondent concluded the Settlement Agreement regarding the payment of the Settlement Sum, which states, *inter alia*, as follows:

"*(1) The Settlement Sum shall be paid in 3 (three) installments according to the following amounts and payment plan:*

a) the first installment of £ 459,783.69 (Four Hundred and Fifty Nine Thousand Seven Hundred and Eighty Three Pounds Sterling and Sixty Nine Cents) shall be paid within 7 business days upon signature of the present Settlement Agreement;

b) the second installment of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) shall be paid on or before 30 August 2022;

c) the third installment of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) shall be paid on or before 30 November 2022;

[...]

2. In the event of delay or incomplete payment of any of the instalments within the stated deadlines, [the First Respondent] shall serve the [the Appellant] with a final notice of default, granting it 10 (ten) additional days to make the due payment. If [the Appellant] fail to remedy the default within the additional deadline granted, the present Settlement Agreement shall be deemed breached by [the Appellant] and all the instalments shall be come due immediately, and the [First Respondent] will be entitled to claim before the competent FIFA dispute resolution body the full outstanding amount of the Settlement Sum, including both the delayed and the not yet due instalments. In addition, [the Appellant] shall be entitled to claim a contractual penalty of 10% on the total outstanding amount due under the present agreement, and a 5% interest p.a. on the contractual penalty amount as of the day of the present Settlement Agreement is breached by [the Appellant].

3. In case [the Appellant] breaches the present Settlement Agreement in accordance with clause 2 above, the applicable interest due on the amounts of the guaranteed transfer fee shall keep accruing as if the present Settlement Agreement had not been concluded by the Parties, until the date of effective payment of the outstanding debt by [the Appellant].

[...]

5. Subject to providing [the First Respondent] with an official decision from the competent authority in Egypt, in case of the sporting activity in Egypt being suspended, or season 2021/2022 being extended because of a force majeure such as Covid-19 before 30 August 2022, the Parties agreed to re-negotiate, in good faith, the dates of the second and third payment taking into account the effects of the suspension or extension of resolution on the economic situation of [the Appellant]. In all cases, any postponement for paying the second and third payments shall not exceed: (i) the commencement date of season 2022/23 for the second payment and; (ii) three months after the commencement date of season 2022/23 for the third payment. [...]"

90. It is further undisputed that the Appellant paid the first instalment on 15 February 2022 and that, by letter of 28 August 2022 to the First Respondent, the Appellant tried to invoke Clause 5 of the Settlement Agreement, referring to an alleged extension of

the 2021/2022 sporting season to end on 30 August 2022 and the postponement of the start of the 2022/2023 sporting season from 1 October 2022 until 15 October 2023.

91. However, in its letter dated 29 August 2022 to the Appellant, the First Respondent rejected the application of Clause 5 stating, *inter alia*, that the end date of 2021/2022 sporting season was always set to be 30 August 2022 and that, in any case, "*there is no evidence that the alleged extension is due to a force majeure such as Covid 19*".

92. While the Appellant and the First Respondent apparently agree that the actual (final) end date of the 2021/2022 sporting season was 30 August 2022 and that the start of the 2022/2023 sporting season was postponed until 15 October 2023, the Parties are in disagreement over whether or not the 2021/2022 sporting season was is fact postponed and, if so, on what basis, and whether Clause 5 was triggered by such an alleged extension or, alternatively, by the postponement of the 2022/2023 sporting season.

93. Moreover, the Appellant and the First Respondent are in disagreement over the possible consequences for the payment dates of the second and third instalments pursuant to the Settlement Agreement if Clause 5 is deemed applicable as the two clubs did not manage to reach an agreement on alternative payment dates.

94. Thus, the main issues to be resolved by the Sole Arbitrator are:

A) When did the second instalment pursuant to the Settlement Agreement fall due, and

B) What are the financial consequences of the Sole Arbitrator's finding under A)?

A) When did the second instalment pursuant to the Settlement Agreement fall due?

95. The Sole Arbitrator initially notes that the starting point pursuant to Clause 2 of the Settlement Agreement is that the second instalment "*of £ 229,891.85 (Two Hundred and Twenty Nine Thousand Eight Hundred and Ninety One Pounds Sterling and Eighty Five Cents) shall be paid on or before 30 August 2022*".

96. However, as set out in Clause 5 of the same agreement, "*Subject to providing [the First Respondent] with an official decision from the competent authority in Egypt, in case of the sporting activity in Egypt being suspended, or season 2021/2022 being extended because of a force majeure such as Covid-19 before 30 August 2022,*" the two clubs agree to renegotiate the original payment dates.

97. While the First Respondent submits, *inter alia*, that the 2021/2022 sporting season was never extended because of force majeure and that it was never provided "*with an official decision from the competent authority in Egypt*", the Appellant submits, *inter alia*, that it could only be expected by the Appellant to provide such a decision if nothing was publicly announced, which was not the case here.

98. Moreover, the Appellant submits that the common intention of the two clubs when agreeing on the inclusion of Clause 5 in the Settlement Agreement was not only to base it on any extension of the 2021/2022 sporting season, but, more importantly, on

any postponement of the 2022/2023 sporting season since the Appellant's payment of the second and third instalments was to be based on the budget for the latter season.

99. The Sole Arbitrator notes that the First Respondent is of the view that the wording of Clause 5 is very clear and should not be subject to interpretation.

100. However, the Sole Arbitrator also notes that, as set out in CAS 2017/A/5172, para 69, "*Swiss Law does not follow a concept of "sens clair" (cf. SFT 111 II 287 and 99 II 285). Reference is made also to SFT 127 III 444 para. b) where it was held as follows:*

"A cet égard, la jurisprudence récente a nuancé le principe selon lequel il y aurait lieu de recourir à des règles d'interprétation uniquement si les termes de l'accord passé entre parties laissent planer un doute ou sont peu clairs. On ne peut ériger en principe qu'en présence d'un "texte clair", on doit exclure d'emblée le recours à d'autres moyens d'interprétation. Il ressort de l'art. 18 al. 1 CO que le sens d'un texte, même clair, n'est pas forcément déterminant et que l'interprétation purement littérale est au contraire prohibée. Même si la teneur d'une clause contractuelle paraît claire à première vue, il peut résulter d'autres conditions du contrat, du but poursuivi par les parties ou d'autres circonstances que le texte de ladite clause ne restitue pas exactement le sens de l'accord conclu".

***free translation**: In this respect, recent case law has modified the principle according to which the rules of interpretation should apply only if the terms of the agreement between the parties leave room for doubt or are unclear. One cannot state that in the presence of a "clear text" one must exclude all other means of interpretation. It derives from Article 18 para. 1 CO that the meaning of a text, even a clear one, is not necessarily determining and that the purely literal interpretation is on the contrary prohibited. Even if a contractual clause appears clear at first view, it can result from the conditions of the contract, from the objectives sought by the parties or from other circumstances that the text of such contractual clause does not convey exactly the content of the agreement that was concluded.*"

101. Consequently, even if the Sole Arbitrator finds that the wording of Clause 5 in the Settlement Agreement would have a clear literal (i.e. unambiguous) meaning, which the Sole Arbitrator actually finds to be the case, the Sole Arbitrator must assess whether or not the contractual Parties truly intended to attribute such a meaning to this specific term.

102. However, in the case at hand and based on the circumstances, the Sole Arbitrator does not find reason to believe that the wording of Clause 5 does not reflect the common intention of the two clubs when signing the Settlement Agreement.

103. As such, the Sole Arbitrator is satisfied that the two Parties agreed on setting "*sporting activity in Egypt being suspended, or season 2021/2022 being extended because of a force majeure such as Covid-19 before 30 August 2022*" as the triggering circumstance, which would make Clause 5 applicable, subject to the First Respondent receiving satisfactory documentation thereof.

104. The Sole Arbitrator appreciates that the Appellant might have considered that any possible extension of the 2021/2022 season would naturally lead to the postponement of the start of the 2022/2023 sporting season. However, such a postponement is not mentioned as a triggering circumstance in the said clause. And the Appellant's concerns regarding future payments being based on the 2020/2023 season budget as set out in the Appellant's email of 13 February 2022 does not have as a consequence that a possible postponement of the start of the 2022/2023 sporting season is also to be considered to trigger the application of Clause 5.

105. Moreover, and for the sake of good order, the Sole Arbitrator also appreciates that "*force majeure*", as included in Clause 5, not only refers to "*COVID-19*", but is to be understood as any circumstance beyond the control of the Appellant, which would lead to the extension of the 2021/2022 sporting season.

106. However, and based on the evidence on file, the Sole Arbitrator finds that the Appellant has failed to discharge its burden of proof to establish that the 2021/2022 sporting season was in fact extended, and even less that such an alleged extension was caused by "*force majeure*".

107. In doing so, the Sole Arbitrator adheres to the principle of *actori incumbit probatio*, which has consistently been observed in CAS jurisprudence and according to which "*in CAS arbitration, 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 the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

108. Moreover, it is undisputed that the First Respondent never received *an official decision from the competent authority in Egypt*, which, not least since the alleged extension is disputed by the First Respondent, is considered to be an additional condition for triggering the application of Clause 5.

109. Based on the above, the Sole Arbitrator finds that it has not been adequately proved that the conditions for triggering Clause 5 of the Settlement Agreement were in fact fulfilled, which is why the Sole Arbitrator concurs with the Appealed Decision that the second instalment of the Settlement Sum pursuant to the Settlement Agreement should have been paid within the original deadline, i.e. by 30 August 2022.

B) What are the financial consequences of the Sole Arbitrator's finding under A)?

110. With regard to the financial consequences of the above, the Sole Arbitrator initially notes that the Appellant does not dispute that it has not yet paid the second and third instalments pursuant to the Settlement Agreement, and it is also noted that the Appellant does not dispute its obligation to do so.

111. The Sole Arbitrator further notes that, during these appeal proceedings, the Appellant has not disputed the findings of the FIFA PSC in the Appealed Decision that the default notices forwarded by the First Respondent did indeed fulfil the requirements set out in Clause 2 of the Settlement Agreement, but only disputed that the second instalment had fallen due on the dates of the default notices.

112. Having analysed the content of the default notices forwarded to the Appellant by the First Respondent and the content of Clause 2 of the Settlement Agreement and based on his findings under A) above regarding the due date of the second instalment, the Sole Arbitrator finds himself fully in line with the findings of the FIFA PSC that the default notices did indeed fulfil the requirements set out in Clause 2 of the Settlement Agreement, and, therefore, the acceleration clause and penalty clause were in fact triggered.

113. As the Sole Arbitrator further notes that the Appellant did not dispute the calculation of the penalty amount pursuant to Clause 2 of the Settlement Agreement and that the First Respondent did not lodge an appeal against the Appealed Decision, the Sole Arbitrator sees no reason or basis for amending the Appealed Decision regarding the amounts to be paid by the Appellant to the First Respondent.

IX. COSTS

114. Article R64.4 of the CAS Code provides as follows:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs 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. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs. [...]"

115. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share 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 re-sources of the parties.*"

116. Thus, as a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In the present case, in consideration of the nature and outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office and notified to the Parties at a later stage, must be borne by the Appellant in their entirety.

117. Furthermore, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondent's legal fees and expenses in the amount of CHF 4,000 (four thousand Swiss francs), while FIFA, particularly taking into account that FIFA was not represented by external counsel and that the hearing was conducted as a virtual hearing, must bear its own costs and other expenses incurred in connection with this arbitration.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 January 2023 by Pyramids FC against the decision rendered by the Single Judge of the Players' Status Chamber of the FIFA Football Tribunal on 6 December 2022 is dismissed.

2. The decision rendered by the Single Judge of the Players' Status Chamber of the FIFA Football Tribunal on 6 December 2022 is confirmed.

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

4. Pyramids FC is ordered to pay to Huddersfield Town AFC a total amount of CHF 4,000 (four thousand Swiss francs) as a contribution towards Huddersfield Town AFC's legal fees and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 14 December 2023

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator