CAS 2023/A/9669 West Ham United Football Club v. PFC CSKA & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms Carmen Núñez-Lagos, Attorney-at-law in Paris, France

Arbitrators: Mr David Phillips KC, Barrister in London, United Kingdom
Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland

between

West Ham United Football Club, England
Represented by Mr Philip Bonner, Mr Robert Danvers and Mr Matthew Bennett, Centrefield LLP, Attorneys-at-law in Manchester, United Kingdom

Appellant

v.

PFC CSKA, Russia
Represented by Mr Alexandre Zen-Ruffinen and Ms Emilie Weible, InLaw Associés, Attorneys-at-law in Neuchâtel, Switzerland

First Respondent

&

Fédération Internationale de Football Association ("FIFA"), Switzerland
Represented by Mr Miguel Liétard Fernández-Palacios and Mr Roberto Nájera Reyes, Attoneys-at-law in Zurich, Switzerland

Second Respondent

I. PARTIES

1. West Ham United Football Club (the "**Appellant**" or "**WHU**") is a professional English football club affiliated to the English Football Association (the "**FA**"), which in turn is a member of the Fédération International de Football Association ("**FIFA**").

2. PFC CSKA (the "**First Respondent**" or "**CSKA**") is a professional Russian football club affiliated to the Russian Football Union ("**RFS**"), which in turn is a member of FIFA.

3. Fédération International de Football Association (the "**Second Respondent**" or "**FIFA**") is the international governing body of football, an association organised and existing under the laws of Switzerland, with its headquarters in Zurich, Switzerland;

   CSKA and FIFA are jointly referred to as "**Respondents**" and together with the Appellant as the "**Parties**."

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and evidence. 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, the Panel refers only to the submissions and evidence it considers necessary to explain its reasoning.

A. BACKGROUND OF THE DISPUTE

5. On 30 August 2021, WHU and CSKA (the "**Clubs**") entered into a "*Player Transfer Agreement*" (the "**Transfer Agreement**") according to which CSKA definitely transferred to WHU the right on a permanent football registration of the player Nikola Vlašić (the "**Player**").

6. In return, WHU agreed to pay a transfer compensation fee of EUR 26,666,667 (the "**Transfer Compensation Fee**"). According to Clause 4.2 of the Transfer Agreement, WHU shall pay the Transfer Compensation Fee in three equal instalments of EUR 8,888,889, to be paid on or before: (i) 6 September 2021; (ii) 31 July 2022; and (iii) 31 July 2023.

7. In addition, such payment shall be made in the CSKA's bank account at the Russian bank named "Promsvyazbank" (*i.e.*, Clause 10.1 Transfer Agreement).

8. Clause 13.4 of the Transfer Agreement reads as follows:

   "*This Agreement sets out the entire agreement between the parties hereto and supersedes all prior discussions, statements, representations and undertakings between them or their advisors regarding the Player.*

If any provision of this Agreement shall be held to be illegal or unenforceable, in whole or in part, the parties will agree in good faith an amendment to that provision to make it valid and legal reflecting as much as possible their original intent. The validity and enforceability of the rest of the Agreement shall be unaffected."

9. On 3 September 2021, the Clubs agreed on an amendment of the Transfer Agreement (the "**First Letter of Variation**"), according to which, amongst others, the Transfer Compensation Fee was amended to the net amount of EUR 25,650,800.31. Additionally, the equal instalments were also amended to the net amount of EUR 8,550,266.77. The payment dates remained unchanged.

10. By 6 September 2021, the Appellant had made payment of the first instalment to CSKA, in accordance with Clauses 4.2 and 10.1 of the Transfer Agreement, and the First Letter of Variation.

11. On 24 December 2021, WHU and CSKA concluded a second amendment of the Transfer Agreement (the "**Second Letter of Variation**") according to which the Clubs agreed to modify the CSKA's bank details stated in Clause 10.1 of the Transfer Agreement. Consequently, any payments related to the Transfer Agreement shall be made by WHU in the CSKA's bank account at the Russian bank Sovcombank ("**Sovcombank**").

12. In both First and Second Letters of Variation (the "**Letters of Variation**"), WHU and CSKA modified clause 13.4, in order to clarify that the Transfer Agreement and the Letters of Variation "*shall together set out the entire agreement between the parties relating to the transfer of the registration of the Player and shall supersede all prior discussions, statements, representation and undertakings between the parties or their respective advisors*."

13. On 24 February 2022, in response to Russia's military actions against Ukraine, the US Government announced the imposition of (further) sanctions on Russian financial institutions (the "**US Sanctions Regime**"). Among these sanctions, the US Government imposed full blocking sanctions over CSKA, its then owner VEB (Vnesheconombank) and the Russian bank in which payments were to be made, Sovcombank, as Specially Designated Nationals ("**SDNs**") by the Office of Foreign Assets Control ("**OFAC**").

14. On 28 February 2022, the UK Government also responded to Russia's military actions against Ukraine with the expansion of the relevant sanctions' regime against certain individuals and entities (the "**UK Sanctions Regime**"). The UK Government, through its Office of Financial Sanctions Implementation ("**OFSI**"), included VEB (Vneshekonombank) and Sovcombank, in its consolidated list of financial targets ("**UK Sanctions List**") as a "**Designated person**", in order to restrict their access to funds and economic resources, and implement a freeze on its assets. OFSI did not include CSKA on its list.

15. On 7 July 2022, CSKA contacted WHU concerning the payment of the second instalment of the Transfer Compensation Fee, in the amount of EUR 8,550,266.77, which was due on 31 July 2022 (the "**Second Instalment**"). The First Respondent mentioned that:

"Unfortunately in February this year PFC CSKA was added to the sanctions lists of the EU, the UK, the US and the USA. We were surprised to know that as the club's main activity is football. […] However, this decision was made formally because at that time, the State Corporation VEB was the club's majority shareholder. Currently the State Corporation is no longer the club's shareholder. Hereby please find the list of the club's shareholders as of 30 June 2022 confirming this fact. Therefore, the cause of the club's being added to the sanctions lists no longer exist. However, the change of the club's status in the banks and other financial institutions is a rather long process. Therefore, we would like to offer you different payment options in the next instalment.

"*First of all, we kindly ask you not to deposit the amount on the account of the Football Association. Instead, the first option is that the euro amount is converted into US dollars and paid to the account of the company 'AVO-Capital' LLC. It is the club's shareholder which have* [sic] *never been under any sanctions. The second option is that PFC CSKA has financial obligations due to other members of football family (clubs from Europe and South America, licensed intermediaries). Thus, WHUFC may pay directly to these football entities under the assignment agreement. We can provide you with the draft of such agreement*."

16. The CSKA majority shareholders mentioned were: Bluecastle Enterprises Limited, UK, AVO-Capital Limited Liability Company, Russia and Trifinco Property Management Limited Liability Company, Russia.

17. On 20 July 2022, WHU responded to CSKA, acknowledging that the Second Instalment was payable on or before 31 July 2022. Nonetheless, the Appellant asserted that it was "*faced with the impossibility of making payment of the Second Instalment or any further sums, to CSKA pursuant to the Transfer Agreement*", either directly or via the alternative methods proposed by CSKA, "*given the sanctions regime in place in the UK following the Russia's illegal invasion of Ukraine*."

18. On 8 August 2022, the First Respondent suggested to make payment to the Dutch club (SC Heerenveen, "**SC Heerenveen**"), to which it had a debt. It also informed that Heerenveen had obtained permission from the Ministry of Finance of the Netherlands to be paid by CSKA for a transfer fee of a player. Relying on this permit, CSKA asked WHU to "*consider the possibility of making the payment directly to SC Heerenveen under applicable transfer agreements*," as an alternative to (partially) fulfil the payment of the Second Instalment.

19. Still on 8 August 2022, WHU insisted that it was "*not willing to consider any such alternative method of payment given this would merely be an attempt to circumvent the effect of the sanctions regime put in place by the UK government following Russia's continuing illegal invasion of Ukraine*." Additionally, the Appellant asserted that Barclays Bank PLC ("**Barclays**") had confirmed that it would not process the payment of the Second Instalment from WHU's bank account via any of the alternative methods suggested by CSKA.

20. On 5 October 2022, the First Respondent presented a proposal concerning the payment of the Second Instalment, through a trilateral agreement between WHU, SC Heerenveen and CSKA. The First Respondent insisted on the change in the composition of CSKA's shareholders, stating that "*the composition of the club's shareholders has changed. There are no entities into any sanctions lists among the shareholders of PFC CSKA*".

21. On 13 October 2022, the Appellant communicated that Barclays had re-confirmed that it would not process payments to CSKA or to the benefit of CSKA, since it "*would amount to the circumvention of the UK sanctions regime*." WHU insisted that "*its inability to pay the second instalment to CSKA does not amount to a wilful breach by the Club of its obligations under the transfer agreement*" since, under such circumstances, "*the Club is simply faced with the impossibility of making payment of the second instalment to, or to the benefit of, CSKA*." It also added that the exemption granted to SC Heerenveen by the Dutch Ministry of Finance only allowed for the direct receipt by SC Heerenveen of the sums owed to it by CSKA (but that that license does not cover receipt of sums by Heerenveen from a third party on behalf of CSKA).

22. On 25 October 2022, CSKA sent to WHU a formal notification letter on the basis of Article 12bis of the FIFA Regulations on the Status and Transfer of Players ("**FIFA RSTP**"). In this letter, the Respondent claimed the payment of the Second Instalment plus 5% interest *per annum*, within 10 days.

23. On 26 October 2022, the Appellant responded to the First Respondent's letter and insisted on its position that it remained unable to make payment to, or to the benefit of, CSKA.

24. On 21 December 2022, CSKA lodged a claim before the Players' Status Chamber of the FIFA Football Tribunal (the "**FIFA PSC**") based on WHU's default on payment.

25. On 18 January 2023, WHU submitted an application to OFSI for a licence to authorise the (direct) payment of the Second Instalment to CSKA pursuant to the Transfer Agreement ("**OFSI Licence Application**"). In the application, WHU stated, as the reason to request the licence "*the prohibited act is making payment of the Second Instalment to CSKA Moscow, which West Ham understands is at least part-owned by a 'designated person', namely VBE (Vnesheconombank) with payment to be made via two other designated persons, i.e. VTB Bank (as intermediary bank) and Promsvyazbank PJSC (as beneficiary bank)".* And added "*West Ham understand that the recipient of the funds is at least partially owned by VBE (Vnesheconombank), a designated person and therefore the funds may be used by a "designated person" or at the direction of a 'designated person'"*.

26. On 22 February 2023, WHU emailed OFSI to amend the name of the beneficiary bank and confirmed that it will be PJSC Sovcombank instead of Promsvyazbank PJSC. It however disclosed that Sovcombank is also a Designated Person under the UK list and a SDN under the USA one.

27. On 23 February 2023, Barclays informed WHU that:

1. Following the introduction of increased sanctions by the UK Government against Russian entities / individuals in late February 2022 as a consequence of Russia's invasion of Ukraine, Barclays temporarily suspended facilitating foreign exchange payments from all of its clients' accounts to Russian rubles registered bank accounts.

2. As a result of that suspension, WHUFC was unable to make payment of the Outstanding Instalment to CSKA's designated bank account on or before the Payment Date, whether via The FA Clearing House in accordance with The FA Rules or directly from its own bank account (given both of these accounts are operated by Barclays).

3. Further, under Barclays' Sanctions Policy, any banking activity involving Russia is restricted if it involves an entity subject to sanctions by the European Union, the Government of the United Kingdom and/or the US Government. As evidenced by the screenshot set out in Annex 1, CSKA is listed as a sanctioned entity on the US Department of the Treasury's sanctions list and Barclays understands this has been the case since 22 February 2022.

4. In light of CSKA's status as an entity which the US Government has proscribed as a Specially Designated National (which can include entities as well as persons), even if the suspension on payments to Russian rubles registered bank accounts set out at point 1 above had not been put in place, in accordance with Barclays' Sanctions Policy, WHUFC:

i. *would not have been able to make payment of the Outstanding Instalment to CSKA on the Payment Date;*

ii. *has not been able to make payment of the Outstanding Instalment to CSKA on any date subsequent to the Payment Date; and*

iii. *remains unable to make payment of the Outstanding Instalment to CSKA, whether such payment was made via The FA Clearing House or WHUFC's own bank account, given that both of those accounts are operated by Barclays.*

5. Further, Barclays understands that CSKA's designated bank account (as notified to WHUFC by way of the variation letter dated 24 December 2021 to the initial transfer agreement) is a bank account held with PJSC SOVCOMBANK. However, PJSC SOVCOMBANK is currently both listed as: (i) a designated person on the UK Government Sanctions List; and (ii) a Specially Designated National by the US Government. As such, notwithstanding CSKA's status as a sanctioned entity as set out above, WHUFC would not be able to make payment of the Outstanding Instalment to CSKA's designated bank account under Barclay's Sanctions Policy given PJSC SOVCOMBANK is also a sanctioned entity.

6. In addition, WHUFC has notified Barclays of several requests it has received from CSKA to discharge its obligation to make payment of the Outstanding

Instalment to CSKA through making payments to third parties on CSKA's behalf, namely to:

i. AVO-Capital LLC, a shareholder of CSKA; and

ii. a third-party football club (SC Heerenveen) to whom CSKA owes monies under an existing transfer agreement.

7. However, based on the information provided to Barclays to date in respect of such alternative payment methods, Barclays has notified WHUFC that it would not permit such payments to be made by WHUFC pursuant to Barclays' Sanctions Policy.

8. In light of the above, Barclays remains unable to facilitate any payment to, or on behalf of, CSKA unless and until it is satisfied that to do so would not be in breach of the sanctions regime. In reaching any such decision, Barclays would require copies of: (i) a licence granted by the Office of Financial Sanctions Implementation in respect of the payment of the Outstanding Instalment by WHUFC; and (ii) further due diligence undertaken by WHUFC which supports the position that the payment of the Outstanding Instalment is not in breach of the sanctions regime. However, the provision of the aforementioned documents alone would not guarantee payment approval and would be subject to additional reviews by Barclays."

28. On 31 March 2023, the FIFA PSC rendered its Decision (the "**Appealed Decision**") condemning WHU to pay of the full Second Instalment of the Transfer Compensation Fee plus interest and threatened with a ban from registering any new players in case the due amount is not paid within 45 days (see below section II for further details).

B. FACTSA AFTER NOTIFICATION OF THE APPEALED DECISION

29. The Parties have made the Panel aware of the following facts that took place after the notification of the Appealed Decision.

30. On 2 June 2023, WHU submitted an application to OFAC for a licence "*to pay monies agreed under a contract to a [SDN]," i.e., the payment of the Second Instalment to CSKA pursuant to the Transfer Agreement* ("**OFAC Licence Application**").

31. On 27 June 2023, Barclays informed WHU that it has been made aware of the Appealed Decision rendered on 31 March 2023. Barclays stated that the Appealed Decision referred to the "possibility" of the outstanding sum be paid to CSKA: i. "*in the event of a "licence being granted by the Office of Financial Sanctions Implementation*"; and "if "*further due diligence undertaken by WHUFC confirmed that the payment of the Outstanding Sum to CSKA (and its designated bank account) would not result in a breach of sanctions*". Barclays confirmed that "*any banking activity involving Russian entities would be prohibited if any entity involved in a transaction was subject to sanctions by the UK Government and the US Government*." With regards to Sovcombank, as the bank is on the UK and USA lists it confirmed that even if WHU has been directed by the FIFA Decision to make payments to Sovcombank, it will not consent or facilitate any payment

being made from WHU bank account to Sovcombank, without an OFSI Licence. It also confirmed that, it will not consent to payments being made to CSKA, regardless of its bank, given that CSKA is on the US list, nor will it consent to make payments to third parties AVO Capital or SC Heerenveen for the same reasons.

32. On 11 August 2023, WHU requested OFSI to provide a response to the Licence Application.

33. On 25 August 2023, OFSI requested WHU to confirm how the Licence Application involves (i) the use of a designated person's frozen funds or (ii) enable the discharge of an obligation owed by the designated person that was incurred prior to the designation.

34. On 1 September 2023, WHU informed OFSI that VBE (Vnersheconombank) no longer held ownership interest in CSKA and that, CSKA was now majority owned by TRINFICO Property Management Limited, Balance Asset Management (BAM), Bluecastle Enterprise Limited (a UK based company) and AVO Capital. Accordingly, the prior obligation derogation is not applicable as CSKA is not a designated person, nor any of its shareholders. In addition, it noted that "*OFSI has drawn its attention to the exception at Regulation 58 (5) of the Russia Regulations, on the basis that no treasury licence would be required for any such payment(s) to be made in circumstances where that activity would not be prohibited*" and asked OFSI if it would require that CSKA have a suitable bank account with a Relevant Institution with permission under the Financial Services and Markets Act 2000).

35. On 26 September 2023 and then on 20 November 2023, WHU asked OFSI when it anticipates a decision will be taken.

36. On 23 October 2023, SC Heerenveen requested the Dutch Ministry of Finance a new exemption, as it had not yet received the amount due by CSKA as per the trilateral agreement, according to which the payment due by CSKA to SC Heerenveen would be paid by HWU.

37. On 27 November 2023, the Dutch Ministry of Finance granted the requested exemption (the "**Heerenveen Exemption**") providing that:

> "*I attach the condition to this permission that, for any payment by West Ham United FC on behalf of CSKA, an exemption has been granted by the authorities of the United Kingdom under the applicable sanctions legislation of that country, or that those authorities have confirmed in writing that no exemption is required for such payment under that legislation*".

38. On 23 February, 17 and 28 March 2024, WHU sent further letters to OFSI enquiring on the status of the Licence Application.

39. On 17 May 2024, the Football Association wrote to OFSI requesting an urgent response to solve the matter.

40. On 10 June 2024, WHU enquired upon OFAC on the status of its Licence Application.

41. On 16 and 17 July 2024, WHU enquired again upon OFSI and OFAC on the status of the License Application.

42. On 29 July 2024, OFSI wrote:

> *"You have requested a licence a) to make payment to CSKA Moscow as part of your outstanding transfer agreement for Nikola Vlasic, b) to football creditors of CSKA Moscow and c) to make payments to or via VTB Bank and Promsvyazbank.*
>
> *Based on the information you have provided, and on the understanding that CSKA Moscow is not owned or controlled by a designated person, OFSI does not consider that a licence would be required for West Ham to make payments to CSKA Moscow, point a) above. Similarly, OFSI does not consider that b) requires a licence. This is based on the understanding that neither CSKA Moscow nor its football creditors are owned or controlled by a designated person. This being the case, a licence would not be required to make this payment in the absence of other regulations. However, with respect to c), you have also informed us that a direct payment to CSK Moscow may be routed via a Russian bank designated for the purpose of regulation 17 A. In the absence of an alternate payment route which does not involve any designated persons (including designated banks), a licence would be required to make a payment via designated Russian banks.*
>
> ***OFSI understand that some people with a minority economic interest in CSKA Moscow may be Designated.*** *Regulation 7 sets out what is meant by a person being owned directly or controlled indirectly by a designated person. If each of the designated persons' shareholding is at 50% or falls below the 50% threshold in respect of share ownership and there is no evidence of control over the non-designated person, the non-designated person (CSKA) will not be subject to sanctions. However, if there is evidence of control, the non-designated person will be subject to sanctions. […]*
>
> *It is your responsibility to ensure compliance with financial sanctions.*
>
> *Please let us know if you would like to continue with an application to make payments to CSKA Moscow via designated Russian banks." (emphasis added)*

43. On 9 August 2024, WHU answered to OFSI as follows:

> -Requested OFSI to confirm there are no individuals with a minority economic interest in CSKA that may be designated, notwithstanding the OFSI July 2024 Letter having suggested that may be the case. It confirmed that the CSKA's shareholders were: Balance Asset Management (BAM) (Bluecastle Enterprises Limited (BEL)– a UK registered company having been dissolved via compulsory strike-off), AVO Capital Limited Liability Company and Mr. Evegeniy Lennorovich Giner.
>
> -Confirmed it wishes to continue with its application to make payment to CSKA pursuant to the Transfer Agreement to Sovcombank

-Whether a licence would be required to make payment to a third investor proposed by CSKA, Vendome Far East Limited ("Vendome"), a company incorporated in Hong Kong and owned by Mr Mohammed Yousu Asif, a person who does not appear in OFSI Consolidated List of the Sanctions lists maintained by OFAC.

44. On 21 August 2024, WHU requested an answer from OFSI.

45. On 16 September 2024 (and again in 30 September 2024), WHU informed OFSI that following OFSI confirmation in its letter of 29 July 2024 that WHU does not require a license in order to make payment to CSKA's football creditors, WHU has been in correspondence with the Federatie van Betaald voetbal Organisaties (the Dutch Federation of Professional Football Clubs – the "**FBO**") to discuss a payment to S.C. Heerenveen. In this regard the Ministry of Finance of the Netherlands had granted on 27 November 2023 an exemption for SC Heerenveen to receive a partial amount of the debt (as allowed by the EU sanctions regime) from WHU to the benefit of CSKA provided that "*an exemption has been granted by the authorities of the United Kingdom under the applicable sanctions legislation of that country, or that those authorities have confirmed in writing that no exemption is required for such payment under that legislation*". WHU therefore required OFSI to confirm WHU analysis on CSKA ownership in its letter of 9 August 2024 to OFSI.

46. On 1 October 2024, the FBO informed that the Dutch Ministry of Finance had suggested contacting OFSI directly to reach a quick solution and had requested WHU Letter's to OFSI dated 1 September 2023 and 28 March 2024.

47. WHU and CSKA thereon waited for the Dutch Ministry of Finance confirmation that the proposed transaction could be made, and WHU waited for OFSI to confirm that, based upon the information it has provided, there were no individuals or companies with a minority economic interest in CSKA that may be designated.

48. On 11 October 2024, the Association of Football Clubs "Russian Premier-League" ("**RPL**") offered to receive the WHU sums into its Raiffeisenbank AO account in Moscow, which it understood not being under sanctions.

49. On 13 October 2024, WHU, among other requests, sought confirmation as to the CSKA bank account (or accounts) to which the RPL would make an onward transfer.

50. On 15 October 2024, Barclays confirmed that, in view of OFSI's letter dated 29 July 2024, a licence will be necessary to make payments to CSKA via Sovcombank, given that it would be routed via a designated Russian bank. However, it would be prepared to facilitate and approve a payment to a CSKA's football creditor, as a licence in this case would not be required, as long as neither CSKA nor any of the football creditors was owned or controlled by a designated person. Barclays however stated that "*Further, OFSI went on to inform WHUFC that it 'understands that some people with a minority economic interest in CSKA Moscow may be Designated'. Whilst the basis of OFSI's understanding that a designated person or persons hold a minority economic interest in CSKA is unclear (and this is not borne out by the Updated CSKA Ownership information which WHUFC has shared with OFSI), Barclays cannot consider facilitating or*

approving a payment from WHUFC's bank account to SC Heerenveen's bank account (for the ultimate benefit of CSKA), until OFSI has confirmed in writing that it agrees with WHUFC's understanding that : a) CSKA is not owned or controlled by a designated person; and (b) there are no individuals with a minority interest in CSKA that may be designated".

51. On 18 October 2024, FBO informed that "*Heerenveen's consent does depend on the position of OFSI and the Dutch Ministry of Finance*".

52. On 18 October 2024, CSKA confirmed that it was "*impossible for CSKA to confirm on which account the transfer would be made by the RPL*".

53. On 4 November 2024, WHU reiterated its request of response to OFSI.

54. On 12 November 2024, FBO informed that "*S.C. Heerenveen has yet to hear further from the Dutch Ministry of Finance, despite having chased for a response on a number of occasions*".

55. On 15 November 2024, CSKA sent the details of a new bank account it has opened at Public Joint-Stock Company METKOMBANK stating that this bank was not subject to sanctions. It also confirmed it did not intend to undergo the delisting process in the USA list maintained by OFAC, as it would take time and cost.

56. On 20 November 2024, CSKA, through its legal counsel, insisted that: "*As for CSKA, I confirm once again that (i) as CSKA repeatedly stated before, CSKA is not owned or controlled by a designated person and thus a licence would not be required for WHUFC to make payments to CSKA pursuant to the Transfer Agreement; and (ii) there are no individuals with a minority economic interest in CSKA that may be designated.*

There is no longer any regulatory obstacle to this payment (if there ever was one) and an OFSI license does not appear to be necessary given that (i) as CSKA repeatedly stated before, both CSKA and its bank are not under any UK sanctions and (ii) both WHUFC and the place of performance of the payment are UK […]".

57. On the same date, WHU requested information to CSKA on METKOMBANK's shareholders, which CSKA eventually declined to enquire.

58. On 21 November 2024, the US Government designated METKOMBANK as an SDN.

59. On 4 December 2024, OFSI responded: "*I am looking to put this licence application for senior decision makers as soon as practicable. However, I just wanted to clarify a couple of details about the type of payment that West Ham United seeks to make and about the nature of confirmation sought under the Heerenveen Exemption*."

60. On 16 December 2024, OFSI sent the following request: "*Has West Ham received any information from CSKA Moscow that demonstrates they are (or are not) Owned and Controlled by a designated person, as set out in Regulation 7 of the Russia Regulations 2019? This could include records of board decision, evidence of DP control (or lack of) or attestations from CSKA Moscow that they are not Owned or Controlled by a*

designated person. If so, could you share this information with OFSI as soon as possible?"

61. In response, on 17 December 2024, WHU sent, among others, a letter from CSKA Legal counsel providing an updated list of shareholders of CSKA and a diagram on the structure and ultimate controlling part of CSKA, as well as the letter sent to OFSI on 9 August 2024 with all the relevant information.

62. By its letter dated 19 December 2024, WHU legal team confirmed to CSKA legal team that OFSI had not issued any decision on WHU's licence application to make payment to Sovcombank and had not answered either on the Heerenveen Exemption requests.

63. On 6 March 2025, WHU legal team informed that OFSI has denied the Licence to make payment to Sovcombank.

C. PROCEDDINGS BEFORE THE FIFA's PLAYERS' STATUS CHAMBER (Ref. n. FPSD-8647)

64. On 21 December 2022, CSKA lodged a claim before the FIFA PSC based on WHU's default on payment of the Second Instalment. In essence, CSKA claimed for the payment of EUR 8,550,266.77 plus 5% interest *p.a.* as of 1 August 2022, the imposition of the applicable sanctions pursuant to Article 12bis par. 4 of the FIFA RSTP, and the payment of all costs in connection with the proceedings.

65. In its answer, WHU requested:

"*i. dismisses CSKA's Claim that WHUFC is in breach of Article 12bis of the FIFA Regulations for failing to make payment of the Second Instalment on account of a force majeure situation and given that the principle of* factum principis *applies;*

ii. in the alternative, dismisses CSKA's Claim on the basis CSKA failed to comply with the formal requirements provided for in the FIFA Regulations in respect of Article 12bis claims;

iii. in the further alternative, in the event the PSC finds that WHUFC is in breach of Article 12bis of the FIFA Regulations (quod non), orders that the due date for payment of the Second Instalment be suspended until the UK Sanctions Regime and the US Sanctions Regime have ended or been amended on terms that enable WHUFC to make payment of the Second Instalment to CSKA;

iv. in the further alternative, in the event the PSC finds that WHUFC is in breach of Article 12bis of the FIFA Regulations, orders that WHUFC shall make payment of the Second Instalment to a designated escrow account created by FIFA;

v. in any of the circumstances set out paragraphs 92(1) – 92(v) above, orders that:

a) interest shall not be payable on the Second Instalment as claimed by CSKA or at all; and

b) sporting sanctions shall not be imposed on WHUFC for the breach of Article 12bis;

vi. CSKA is liable to pay the procedural costs in relation to these proceedings; and

vii. CSKA is liable to pay in full, or in the alternative, a contribution towards WHUFC's expenses pertaining to these proceedings."

66. On 31 March 2023, the FIFA PSC rendered the Appealed Decision deciding that:

"*1. The claim of the Claimant, PFC CSKA, is accepted.*

2. The Respondent, West Ham United Football Club, must pay to the Claimant the following amount(s):

*- **EUR 8,550,266.767** plus 5% interest* p.a. *as from 1 August 2022 until the date of effective payment;*

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

*4. 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 player, 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 all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

*5. 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 on the Status and Transfer of Players.*

6. The decision is rendered without costs."

67. The grounds of the Appealed Decision were notified to the Parties on 27 April 2023. With regards to the merits, the FIFA PSC determined that:

-WHU committed to pay the Transfer Compensation Fee and it is undoubtedly liable to pay the amount in dispute since the mere existence of sanctions has, as such, no effect on the existence and maturity of a debt.

-WHU did not discharge its burden of proof that it indeed did everything in its power to try to remit the claimed payment. The payment may have been made if WHU had

obtained a licence from OSFI and had undertaken further due diligence to show that the payment was not in breach of the sanctions. There is no proof on file that WHU undertook these steps in order to exhaust all of its possibilities to make such payment.

-No situation of *force majeure* could be established and bearing in mind the basic legal principle of *pacta sunt servanda*, WHU shall be held liable to pay CSKA the outstanding amount deriving from the Transfer Agreement.

68. In light of the above, the FIFA PSC decided that CSKA was entitled to receive an amount of EUR 8,550,266.77 as the outstanding amount deriving from the Transfer Agreement plus the annual interest of 5% from 1 August 2022 until the date of the effective payment. It also determined that any payment should be made to CSKA Sovcombank account.

III. PROCEEDINGS BEFORE THE CAS

69. On 17 May 2023, in accordance with Article R48 of the Code of Sports-related Arbitration (the "**Code**") (2023 edition), the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport ("**CAS**") against CSKA and FIFA with respect to the Appealed Decision. The Appellant nominated Mr David Phillips K.C., Barrister in London, United Kingdom, as an arbitrator.

70. On 31 May 2023, the First Respondent informed that the Respondents had agreed to jointly nominate Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland, as an arbitrator.

71. On 19 June 2023, and pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to rule on the present dispute had been constituted as follows:

President:	Ms Carmen Núñez-Lagos, Attorney-at-law in Paris, France
Arbitrators:	Mr David Phillips KC, Barrister in London, United Kingdom Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland

72. On 27 June 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code within the extended deadline.

73. On 7 September 2023, with the consent of the Appellant and the Second Respondent, the First Respondent requested the suspension of the proceedings until 2 October 2023, since the Appellant and the First Respondent were engaged in discussions aiming at resolving the dispute amicably. Such petition was granted by the CAS Court Office on the same day.

74. On 3 October 2023, with the consent of the Appellant, the First Respondent requested a further suspension of the proceedings of one month.

75. On 4 October 2023, the CAS Court Office advised that this procedure would remain suspended until further notice from any of the Parties.

76. On 23 February 2024, the CAS Court Office invited the Appellant and the First Respondent to inform about the status of their negotiations by 28 February 2024.

77. On 27 February 2024, the First Respondent informed that the Parties were still trying to find a solution to solve the dispute amicably.

78. On 26 April 2024, the First Respondent requested the immediate lifting of the proceedings' suspension and filed its Answer.

79. On 1 May 2024, the CAS Court Office lifted the suspension of the proceedings with immediate effect and invited FIFA to file its Answer within ten (10) days, which was, after granting an extension of the deadline, filed on 24 June 2024.

80. On 24 June 2024, the CAS Court Office invited the Parties to inform by 1 July 2024 whether they preferred for a hearing to be held or for the Arbitrators to issue an award solely based on the Parties' written submissions, and whether they requested a case management conference with the Panel in order to discuss procedural issues.

81. On 26 June 2024, the Second Respondent informed that it considered unnecessary to hold a hearing and a case management conference with the Panel.

82. On 28 June 2024, the Appellant requested to hold a hearing in the present matter. Additionally, the Appellant requested the admission of additional documents to the case file pursuant to Article R56 of the Code. Finally, the Appellant requested to hold a case management conference to address the admission of the additional documents, in case the Panel feels unable to grant such petition based on written submissions alone.

83. On the same day, the First Respondent also requested to hold a hearing in the present matter and left to the Panel's discretion to hold a case management conference.

84. On 1 July 2024, the CAS Court Office invited the Respondents to comment on the new documents filed by the Appellant by 8 July 2024.

85. Still on 1 July 2024, the Second Respondent informed that FIFA did not object to the admission of the new documents filed by the Appellant and left it to the Panel to decide whether these documents should be admitted and are relevant to the case. Additionally, FIFA requested that the hearing was scheduled on 24, 25 or 26 September 2023, subject to the Panel's availability and final decision to hold a hearing.

86. On 4 July 2024, the First Appellant informed that CSKA objected to the admission of the new documents filed by the Appellant along with the grounds for such opposition.

87. On 5 July 2024, the Panel ordered the admission of the new documents submitted by the Appellant on 28 June 2024, limited to those dated after the Appeal Brief's filing (i.e., 27 June 2023).

88. On 8 July 2024, the Appellant proposed to the Panel "*to share with the CAS Court Office any further correspondence upon which it wishes to rely and which it may exchange with OFSI and OFAC prior to the final hearing*" and "*to do so at appropriate, but regular, intervals, to ensure that the Respondents are aware of any such correspondence and are not prejudiced in advance of the final hearing*."

89. On 9 July 2024, the Second Respondent informed that it did not object to the Appellant's proposal in its letter of 8 July 2024. The First Respondent confirmed the same on 10 July 2024.

90. On 11 July 2024, the Panel upheld the Appellant's proposal to share with the CAS Court Office any further correspondence it may exchange with OFSI and OFAC prior to the final hearing. The Panel made the document production subject to a future decision concerning the admission of any document on the basis of Articles R56 and R57 of the Code.

91. The Order of Procedure was signed on 17 July 2024 by the Appellant, on 18 July 2024 by the First Respondent and on 20 July 2024 by the Second Respondent.

92. On 25 July 2024, the Appellant requested to accept a number of documents to the case file which was not objected by the Respondents.

93. On 29 July 2024, the Appellant applied to produce a further set of documents.

94. On 5 August 2024, the First Respondent objected to the admissibility of the new documents produced by the Appellant on 29 July 2024.

95. On 12 August 2024, the Second Respondent sent its comments to the 29 July 2024 correspondence from the Appellant. It stated that FIFA Clearing House is a service provider for training rewards which operates independently from the Second Respondent.

96. On 14 August 2024, the Panel ordered the admission of the new documents submitted by the Appellant on 25 July 2024, but denied the documents attached to the Appellant's correspondence of 29 July 2024, as the documents are dated 2022 and 2023, and could therefore be produced earlier.

97. On 21 August 2024, the First Respondent repeated its evidentiary request that the Appellant shall produce the transfer agreement signed with the Italian cub Torino in relation to the Player. On 27 August 2024, the Appellant requested that the request be dismissed. On 28 August 2024, the Panel denied the First Respondent's evidentiary request, for lack of relevance to decide the issues at stake.

98. On 19 September 2024, the Appellant sent a further request to accept new documents, which were admitted to the file by the Panel on 24 September, after hearing the Respondents.

99. On 26 September 2024, a hearing was held at the CAS Court Office in Lausanne, Switzerland. In addition to the members of the Panel, Mr. Antonio de Quesada, Head of Arbitration, and the following persons attended the hearing;

a) For the Appellant:

Mr Phillip Bonner (Centrefield LLP)
Mr Robert Danvers (Centrefield LLP)
Mr Sébastien Besson (Lévy Kaufmann-Kohler)
Mr Andy Mollett, representative of West Ham United Football Club (by videoconference)
Mr Daniel Bayfield, expert (by videoconference)

b) For the First Respondent:

Mr Alexandre Zen-Ruffienen (Inlaw associés)
Ms Emlie Weible (Inlaw associés)
Mr Denis Postnov, CSKA, (by videoconference)
Mr Yuri Khabarov, CSKA, (by videoconference)

c) For the Second Respondent:

Mr Miguel Liétard (FIFA)
Mr Roberto Nájera (FIFA)

100. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions from the Panel. At the hearing, the Parties agreed to suspend the proceedings until 3 December 2024. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure followed by the Panel and that their right to be heard has been respected.

101. On 28 November 2024, the Appellant sent further documents to be accepted to the case file and requested a further 2-month suspension of the proceedings.

102. On 29 November 2024, the First Respondent refused the suspension of the proceedings and on 3 December 2024, it gave a detailed reasoning why no further suspension shall be granted and it requested that the procedure be resumed.

103. On 4 December 2024, the Panel denied a further suspension of the proceedings.

104. On 19 December 2024, the Parties filed further unsolicited statements and documents on the sanction's situation.

105. On 9 January 2024, the First Respondent, based on the Panel's request commented upon the Appellant's submission from 28 November and 19 December 2024.

106. On 10 January 2024, the Panel admitted the Appellant's written submissions and documents filed on 28 November and 19 December as well as the First Respondent's written submission filed on 9 January 2025 to the file. The Panel also informed the Parties that it will not admit any further unsolicited documents.

107. On 6 March 2024, the Appellant filed an unsolicited document The Respondents did not oppose to its filing. The Panel decided to accept the document.

IV. THE PARTIES' SUBMISSIONS

108. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. THE APPELLANT'S SUBMISSION AND REQUEST FOR RELIEF

109. The Appellant argues that the Appealed Decision should be overturned in full since it is impossible to make payment of the Second Instalment without breaching the UK and US Sanctions Regimes (collectively, the "**Sanctions Regimes**") and committing a criminal offence. Consequently, the Appellant sustains that it was affected by a *force majeure* event and a subsequent impossibility to perform the payment. In the alternative, the Appellant seeks the postponement and/or the amendment of the payment obligation on the basis of *factum principis* and *clausula rebus sic stantibus* principles.

110. The Appellant acknowledges that it is liable to pay the Second Instalment. However, the Appellant argues that a *force majeure* situation justifies the alleged default of payment and extinguishes the Appellant's obligation. The Appellant explains that the *force majeure* event arose from the following circumstances:

> -The breach claimed by CSKA was due to the Russia's military actions against Ukraine and the subsequent Sanctions Regimes, that are extraordinary and unforeseeable events that occurred with beyond the sphere of activity of the Appellant and that imposed on the Appellant in an irresistible manner.
>
> -According to the Swiss Federal Tribunal and CAS jurisprudence, an event constitutes *force majeure* when it meets the following conditions: (i) it arises from an event or impediment beyond the control of the obligated party; (ii) it could not have reasonably been foreseen by the party when it agreed to assume the relevant contractual obligations; (iii) it is an extraordinary and unforeseeable event beyond the sphere of the activity of the person concerned that impose themselves on that person in an irresistible manner; and (iv) it renders the performance of the relevant obligation impossible.
>
> -Russia's military actions against Ukraine and the subsequent Sanctions Regimes were unforeseeable for the Appellant since they started 6 months after the Clubs concluded the Transfer Agreement. At the moment of conclusion, the Appellant could not have reasonably foreseen that it would be unable to make payment of the Second Instalment. Since the Second Instalment became due 5 months after the Sanctions Regimes were imposed, the Appellant relies on a *force majeure* event that occurred before the default of its financial obligations.

-The Appellant is unable to perform the Second Instalment by the imposition of the Sanctions Regimes that are matter of law imposed by national governments and applicable generally to transaction falling within their geographical scope. Accordingly, the impediments were beyond the control of the Appellant, occurred beyond its sphere of the activity, could not be resisted, avoided or overcome by the Appellant, and were not attributable to the Appellant.

-CAS award 2022/A/8708 (RFS v. FIFA) had previously determined that the imposition of international sanctions on Russian people and businesses is sufficient to constitute a *force majeure* event.

-It has satisfied the evidential burden of proving that, as a result of the Sanctions Regimes, it is objectively impossible to make payment of the Second Instalment. On one hand, Barclays submitted several letters that confirms: (i) Barclays temporary suspended facilitating foreign exchange payments to Russian rubles registered bank accounts due to the introduction of the UK Sanctions Regime; (ii) any banking activity involving Russia is restricted if it involves an entity sanctioned by the EU, the UK or the US; (iii) Barclays was unable to facilitate payment due to Sovcombank's status before the OFSI, and CSKA's and Sovcombank's status as SDNs before OFAC (iii) any payment to Heerenveen will also require OFSI's approval.

-Additionally, the Barclays' Letter shows that WHU required licences from OFSI and OFAC to make the payment of the Second Instalment. However, these licences have not been granted up to the date of the Appeal Brief. The Appellant has undertaken detailed searches to ascertain whether or not the payment would breach the sanctions regimes, but has been unable to overcome such impediment. Therefore, the Appellant has indeed carried out extensive due diligence.

111. The Appellant considers that Swiss law recognises the notion of *force majeure* under the doctrine of subsequent impossibility to perform, as regulated in Article 119 Swiss Code of Obligations (the "**SCO**"). Therefore, the Appellant sustains that it was prevented from performing its payment obligation due to circumstances beyond its control. Consequently, the obligation of payment is extinguished since:

-Swiss law jurisprudence identifies three main conditions for the application of Article 119 SCO: (i) the performance of the contractual obligations must be lasting and objectively impossible due to factual or legal circumstances; (ii) the impossibility must have arisen after the formation of the relevant contract; (iii) the impossibility must not be attributable to the party claiming the impossibility to perform.

-In the case at hand, the aforementioned conditions are met. First, the sanctions regimes rendered the Appellant's performance of the Second Instalment objectively impossible. The impossibility cannot be considered temporary, as there is no way to definitively know or predict if or when the various international sanction regimes will be amended. In addition, the impossibility clearly arose after formation of the Transfer Agreement and is plainly unattributable to the Appellant.

-The legal consequence of a subsequent impossibility is that the contractual obligation, which performance became impossible, is "*extinguished.*" The Appellant is thus released from its obligation to make the payment of the Second Instalment. The subject matter of the Transfer Agreement cannot be returned without the Player's wishes. Therefore, the Appellant is not enriched and there is no right of restitution pursuant to Article 64 SCO.

-WHU has also acted in good faith with the counterparty to the bilateral contract. The Appellant has done everything in its power to make the payment of the Second Instalment to CSKA, including: (i) making the OFSI Licence Application; (ii) making the OFAC Licence Application; (iii) carrying out extensive due diligence; and (iv) offering to make payment to an interest-bearing escrow account created and overseen by FIFA. In light of the foregoing, the obligation to make payment of the Second Instalment should be extinguished.

112. Alternatively, the Panel can decide that the payment of the Second Instalment should be made at a date and time when doing so would not put the Appellant in contravention of the sanctions' regimes.

113. The Appellant asserts that the principle of *factum principis* entitles the postponement of the performance of the payment to a later date. The Appellant explains that: (i) the UK Government interfered in the private legal relationship between WHU and CSKA; and (ii) the UK Sanctions Regime has an impact on the Transfer Agreement. Under such circumstances, the Appellant argues that such interference changed the effect and unbalanced the legal relationship previously established, constituting a situation of *factum principis*.

114. Based on the principle of *clausula rebus sic stantibus*, the Appellant requests the amendment of the terms of the Transfer Agreement by the Panel, on the basis of a change of circumstances to the extent that the continuation and performance of the Transfer Agreement can no longer be required. The Appellant explains that such intervention is acceptable, considering:

-As established in CAS jurisprudence, the Panel's intervention to amend the terms of the Transfer Agreement is acceptable if: (i) subsequent, unforeseen and inevitable circumstances result in a fundamental change in the contractual relationship; and (ii) that change in the contractual relationship renders performance excessively burdensome for one party.

-Russia's military actions against Ukraine and the subsequent imposition of sanctions were new, unforeseeable and inevitable circumstances at the moment of the negotiation of the Transfer Agreement. It also resulted in an unfair disparity between the parties' reciprocal obligations. At the conclusion of the Transfer Agreement, the Appellant did not know that the payment of the Second Instalment would put it in breach of the Sanctions Regimes and would result in it committing a criminal offence. Therefore, the performance of the payment has become excessively burdensome to the Appellant.

-Should the requisite conditions be fulfilled, the Panel may adapt/amend the Transfer Agreement to restore the equilibrium between the Clubs and rectify any disproportion that has arisen. As a consequence, the Appellant must be temporarily exempted from fulfilling the payment of the Second Instalment until: (i) the Sanctions Regimes have been lifted or amended; or (ii) the requisite licences obtained from OFSI and OFAC, such that the payment of the Second Instalment can be made. Alternatively, the Panel may order the Appellant to make payment of the Second Instalment to a designated interest-bearing escrow account created and overseen by FIFA.

115. In its Appeal Brief, the Appellant requested relief, in the following terms:

"*The Appellant therefore seeks an award that:*

147.1. this Appeal is admissible and well-founded;

147.2. the Appealed Decision is annulled and replaced with a new decision stating that:

147.2.1. CSKA's Claim against West Ham is dismissed;

147.2.2. The Second Instalment to CSKA under the Transfer Agreement shall be considered as extinguished in its entirety and is not due to be paid by the Appellant;

147.2.3. In the alternative, the due date for payment of the Second Instalment shall be suspended/amended until the UK Sanctions Regime and US Sanctions Regime have ended or been amended on terms that enable the Appellant and the Appellant's bank, Barclays, to make payment to CSKA;

147.2.4. In the further alternative, the Appellant shall be ordered to make payment of the Second Instalment to a designated interest-bearing escrow account (created and overseen by FIFA) on terms that ensure onward payment of the Second Instalment to CSKA shall only take place upon the UK Sanctions Regime and the US Sanctions Regime having ended or been amended on terms that enable the Appellant and the Appellant's bank, Barclays, to make payment to CSKA; and

147.2.5. Given that Appellant has a prima facie contractual basis for not making payment to CSKA, the overdue payable (namely, the Second Instalment) does not fall within ambit of Article 12bis of the FIFA Regulations and thus the Appellant shall not face any financial and/or sporting sanctions for non-payment of the Second Instalment to CSKA pursuant to Article 12bis and/or Article 24 of the FIFA Regulations.

147.2.6. The First Respondent shall pay in full, or in the alternative, a contribution towards the costs and expenses, including the Appellant's legal costs and expenses, pertaining to these appeal proceedings before the CAS."

B. THE FIRST RESPONDENT'S SUBMISSION AND REQUESTS FOR RELIEF

116. The First Respondent opposes to the Appellant's allegations regarding the merits of the dispute and denies the existence of a *force majeure* event pursuant to Article 119 SCO. In addition, the First Respondent sustains that the conditions of default of creditor are not met, and consequently, the Appellant should have made use of the remedies provided by Swiss law to fulfil its payment obligation. The First Respondent concludes that the Appealed Decision must be upheld.

117. The First Respondent considers that the Russia's military actions against Ukraine and the Sanctions Regimes do not constitute a *force majeure* event. For the First Respondent, such events are not impediments that render the performance of the WHU's obligation impossible, since:

> -An obligation becomes impossible if: (i) it is subsequent to the conclusion of the contract; (ii) it is definitive; (iii) and must be objective, in the sense that neither the debtor nor anyone else can provide it anymore. However, a money obligation, being a gender debt, can never be considered objectively impossible and will never be able to be released within the meaning of Article 119 SCO.
>
> -The impossibility raised by the Appellant is subjective since financial obligations can be carried out by a third party, not limited by the Sanctions Regimes. CSKA offered WHU alternative solutions to legally proceed with the payment of the Second Instalment, but they were refused by WHU without further investigation and no valid explanation. The impossibility is also contested by the fact that WHU was able to pay the transfer fee due to FK Spartak Moscow, a Russian club that is also affected by the Sanctions Regimes.
>
> -The above-mentioned principles have been confirmed by multiple CAS awards. According to such principles, WHU should have taken all relevant efforts to comply with its payment obligation. The CAS award referred to by the Appellant is not applicable to the case at hand since it did not examine the situation of the performance of a contractual financial obligation.
>
> -CSKA cannot be forced to accept the alternative payment method proposed by the Appellant (*i.e.*, paying the Second Instalment to a designated interest-bearing escrow account created and overseen by FIFA). CAS jurisprudence has confirmed that it is to the discretion of the creditor to determine the details and place of the bank account into which the amount due is to be transferred.

118. Additionally, the First Respondent argues that WHU's payment obligation is binding since CSKA has not defaulted its obligations as a creditor. The First Respondent explains that Article 91 SCO states that the creditor is in default if he refuses without good cause to accept performance, or if he does not carry out all actions to allow the obligor's performance. However, the First Respondent clarifies that an essential condition of this regime is that the debtor must be able to perform his service, as per Article 96 SCO. In the case in hand, the First Respondent considers that the Appellant has expressly admitted

that it was and still is unable to perform payment, and consequently, the default of the creditor regime cannot apply either.

119. In the alternative, if the Panel considers that CSKA was in default as creditor, the First Respondent sustains that the Appellant did not make use of the remedies under Swiss law, as per Article 92 SCO. For the First Respondent, WHU could have deposited the object at the expense and risk of the creditor and thereby discharging its obligation. The First Respondent also explains that, under Swiss law, the debtor cannot remain inactive and simply not pay, and therefore WHU is fully responsible for its inaction. Accordingly, the First Respondent concludes that the Appellant cannot claim that the debt is extinguished due to its impossibility to comply with the contractual terms.

120. As a second alternative, in case the Panel rules that a *force majeure* prevented WHU to complete the payment of the Second Instalment, the First Respondent asserts that the Appellant must reimburse to CSKA the amount by which it has enriched itself, in application of the unjust enrichment rules (*i.e.*, Article 62 *et seq SCO.*). The First Respondent sustains such position with the following arguments:

-The Parties accepted that the value of the Player was EUR 25,650,800.31, but WHU would be acquiring the Player for the payment of just EUR 8,550,226.77. Additionally, WHU sold the Player to the Italian club Torino for EUR 12,800,000.00 during the course of these proceedings. WHU cannot claim its good faith since it pretends to pay for the Player a third of his value and obtain profits from a later sale.

-The Appellant's conclusions from Article 64 SCO are largely incomplete and erroneous since the restitution in value is conceivable. Therefore, CSKA is entitled to a restitution in value up to the unjust enrichment. The restitution of the Player, by its nature, would be converted into value: the balance of the Transfer Compensation Fee after the deduction of the first instalment (*i.e.*, EUR 17,100,453.77).

-WHU has obtained a substantive competitive advantage from its failure to fulfil its financial obligations under the Transfer Agreement. The amount owed by WHU to CSKA represents the 30% of CSKA's seasonal budget. Therefore, the consequences in terms of club competitiveness are major. The governing bodies of football have confirmed the importance of the compliance by clubs with their commitments arising from their transfer agreements, as a condition to grant the licence required to participate in official competitions.

121. The First Respondent also argues that the *factum principe* addressed by the Appellant is known under Swiss law as the principle of *clausula rebus sic stantibus*. However, the First Respondent considers that there is no incontestable and serious imbalance, nor did the Appellant demonstrate the existence of an abuse of right that justifies the application of *clausula rebus sic stantibus* principle. As a consequence, the Panel cannot amend the terms of the Transfer Agreement, as per the Appellant. This position was explained by the First Respondent as follows:

-The principle of *clausula rebus sic stantibus* allows the modification of the contract when circumstances have changed to such an extent that the maintenance of the

contract cannot reasonably be imposed on one party. The application of this principle requires that: (i) the contract is unbalanced; (ii) the subsequent events are unforeseeable and insurmountable; (iii) the affected party is not at fault; (iv) the affected party did not assume the risk; and (v) that such imbalance creates an abuse of right. Additionally, the Swiss Federal Tribunal has considered that the application of this principle must remain an exception.

-In the case at hand, there is no contractual imbalance between the obligations of WHU and CSKA. The Appellant has not argued that the Player does not have the value of the Transfer Compensation Fee due to unforeseeable circumstances subsequent to the Transfer Agreement. WHU also assumed the risks of the transfer market once it decided to agree on the Transfer Compensation Fee with CSKA, and it did not include a hardship clause in the Transfer Agreement.

-In addition, the Sanctions Regimes does not apply directly to WHU, but to its bank. The Appellant can freely access its bank accounts and organise its money transfers as it sees fit. CSKA also offered multiple solutions on transferring the money to a third party not subject to the Sanctions Regimes. However, WHU rejected such options without detailed investigation, even though such scheme has proven to be effective in other cases. Finally, WHU did not provide evidence about the progress of the OFSI Licence Application and OFAC Licence Application to prove that it has undertaken all reasonable efforts to obtain such licenses.

122. In its Answer, the First Respondent requested the Panel to decide:

"*In view of the above, the Respondent takes the following conclusions*

1. To dismiss the Appeal of WHUFC.

2. To confirm the FIFA Decision (ref. FPSD-8647).

3. Additionally, to amend the FIFA Decision (ref. FPSD-8647) in the sense that the due amount shall be paid to CSKA or any other party indicated by CSKA.

4. To order West Ham United Football Club to pay all costs of the arbitration and a contribution towards Professional Football Club CSKA's legal fees and other expenses."

C. THE SECOND RESPONDENT'S SUBMISSION AND REQUESTS FOR RELIEF

123. The Second Respondent argues that the Appealed Decision must be upheld since the Appellant did not prove that the payment of the Second Instalment was impossible.

124. FIFA considers that the Appellant's contentions are of no avail since CSKA has offered at least two feasible options to release WHU from its payment obligation, but the Appellant has simply disregarded them without any convincing grounds. The Second Respondent also sustains that WHU has not met its burden of proof to show that the payment of CSKA and CSKA's alternative options were not feasible. As a consequence,

FIFA concludes that the Appellant did not prove an impossibility to pay. The Second Respondent sustains its position on the following grounds:

-CSKA has been proactive to find a solution and offered several payment options to WHU. However, the Appellant disregarded all CSKA's options by simply alleging that its bank could not process the payment. As per FIFA's jurisprudence, a difficulty in executing a payment due to banking restrictions or governmental constrains are not accepted as a justification for late payment. Therefore, the Appellant's "excuses" for avoiding the payment of the transfer fee agreed in the Transfer Agreement were not valid.

-CAS jurisprudence has constantly confirmed that the debtor must take all necessary efforts to satisfy the payment in accordance with the relevant agreement or the FIFA decision. However, the Appellant failed to prove – at least – two points: (i) that it has made serious efforts to comply with the payment; and (ii) that CSKA's options were not feasible. The Appellant failed to demonstrate that it considered the option of opening a bank account.

-WHU relied on the Barclay's Letter to prove that the payment obligation was impossible. Nevertheless, such document stated that the payment was possible in case WHU provided: (i) a licence granted by OFSI; and (ii) further due diligence which supports that the payment of the Second Instalment is not in breach of the Sanctions Regimes. During the first-instance proceedings, the FIFA PSC did not receive any evidence that WHU had at least requested a licence from OFSI or that further due diligence was taken.

125. Additionally, the Second Respondent explains that the Appellant changed its requests for relief from the first instance proceedings to this appeal stage, against the scope of the Panel's *de novo* power under Article R57 of the Code. Based on the following arguments, the Second Respondent concludes that the Panel must reject the new requests for relief sought by the Appellant:

-The Appellant never raised the extinction of the debt during the proceedings before the FIFA PSC but limited its request to be exempted from paying interests and being sanctioned. Nonetheless, the Panel's *de novo* power of review is limited to the scope of the first-instance dispute. Therefore, the new relief sought by the Appellant is outside the Panel's scope at this CAS instance.

-WHU's new request for relief is also against the good faith and *venire contra factum proprium* principles. The Respondents had the legitimate expectation that WHU recognized the outstanding amount and that was willing to pay it. Accordingly, this kind of behaviour does not deserve legal protection.

-Regarding the new evidence that was not presented during the first-instance proceedings before the FIFA PSC, the Second Respondent trusts the Panel's wisdom to answer at this stage if WHU has made all reasonable efforts to comply with its payment obligation, or if it had a real impossibility to pay. Notwithstanding, the appeal

could only be successful in what it was requested during the FIFA proceedings, excluding all new requests for relief sought by the Appellant at this stage.

126. In its Answer, the Second Respondent requested the Sole Arbitrator to decide:

> "*Based on the foregoing, FIFA respectfully requests 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*."

V. JURISDICTION

127. Article R47 of the Code provides as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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 him prior to the appeal, in accordance with the statutes or regulations of that body*."

128. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 para. 1 of the FIFA Statutes, which provides that "*Appeals against final decisions passed by FIFA's legal bodies and against decision passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*."

129. In addition, the Respondents did not object to the jurisdiction of the CAS, and the Parties furthermore confirmed the CAS jurisdiction when signing the Order of Procedure.

130. Considering the above, the Panel finds that CAS has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

131. The grounds of the Appealed Decision were notified to the Appellant on 27 April 2023 and the Statement of Appeal was filed on 17 May 2023, *i.e.* within the statutory time limit of 21 days set out in Article R49 of the Code and Article 57 para. 1 of the FIFA Statutes.

132. The Appeal complied with all the requirements of Articles R47 ss. of the Code, including the payment of the Court Office fee.

133. It follows that the appeal is admissible.

VII. APPLICABLE LAW

134. Article R58 of the Code provides as follows:

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

135. In the Transfer Agreement, the Parties did agree in para. 13.3 as follows: *"[t]his Agreement, rights and obligations of the parties shall be governed by and interpreted in accordance with the FIFA Regulations*". There is no explicit reference to any state law being applicable.

136. Pursuant to Article 56 para. 2 of the FIFA Statutes:

> "*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*."

137. The Panel notes that the Appellant and the Respondents applied in these proceedings the rules and regulations of FIFA and referred to Swiss law principles.

138. Based on the above, and with reference to the filed submissions, the Panel holds that primarily the various rules and regulations of FIFA shall apply and additionally, when necessary Swiss law.

VIII. MERITS

139. It is uncontroversial that: a) the Player was transferred from CSKA to WHU; b) the transfer fee was initially EUR 26,666,667 which was reduced by deducting the FIFA solidarity contribution to be paid by WHU to an amount of EUR 25,650,800.31; c) this amount was to be paid in three instalments; d) the First Instalment of EUR 8,550,266.77 has been paid; e) the Second Instalment equals USD 8,550,266.77 and fell due on 1 August 2022, i.e after the Sanctions Regimes were put in place.

140. The Appellant challenges the Appealed Decision stating that its failure to pay the Second Instalment was justified by a *force majeure* event.

141. The First Respondent for its part notes that the Appealed Decision shall be modified when it states that the amount due cannot be paid to the bank provided for under the Bank Account FIFA Registration Form, i.e. Sovcombank, as this bank is a Designated Person under the UK Sanctions List.

142. Before examining the merits of the appeal, the Panel notes that the following provision is relevant and applies to the case:

Article 12bis of the FIFA RSTP, which states:

> "*Overdue payables*
>
> *1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.*
>
> *2. Any club found to have delayed a due payment for more than 30 days* ***without a prima facie contractual basis*** *may be sanctioned in accordance with paragraph 4 below. […]"*

143. The Commentary to the FIFA RSTP explains that the aim of article 12bis is "*to ensure that players and clubs that are entitled to contractual amounts receive them as swiftly as possible, without unnecessary or unjustified delay. Deliberate dilatory tactics and behaviour on the part of a debtor club will not be tolerated under any circumstances. If a claim is made pursuant to article 12bis, the burden lies with the debtor club to demonstrate that it has a contractual basis to justify the non-payment of the relevant amount due. If it cannot do so, it will be ordered to pay the overdue payables and the relevant disciplinary sanction will be imposed*."

144. It is commonly understood that not only a "contractual basis" may justify the non-payment. Other legal impediments, such as *force majeure* or legal impediment to make payment may enlarge the list. The Panel notes that the Transfer Agreement does not contain a *force majeure* clause, nor does FIFA Regulations or Swiss law. However, the legal concept of *force majeure* is valid an applicable under Swiss law and CAS case law. The CAS case law has recognized that the failure to comply with a contractual obligation can be excused if caused by a *force majeure* event. According to CAS decisions (see CAS 2021/A7673 & 7699, citing, among others, CAS 2018/A/5337, CAS 2017/A/5496, CAS 2013/A/3471), "*force majeure implies 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*".

145. WHU argues that it was legally prevented from making the payment of the Second Instalment due to the Russia's military actions against Ukraine and the Sanctions Regimes in place since February 2022, and therefore it is not at fault. Further, it sustains that the obligation is to be extinguished, or alternatively, suspended on grounds of (i) force majeure, (ii) the Swiss law doctrine of subsequent impossibility under Article 119 SCO ("*[a]n obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor*") which provides that the consequence of a subsequent impossibility to perform is that the obligation is "extinguished" and/or (iii) the principle of "*factus principis"*. For the remainder of this Award, the foregoing grounds shall be collectively referred to as "Force Majeure".

146. The Respondents reject the qualification of Force Majeure, as at least one of the conditions required to admit it, namely, the existence of an impediment that "*renders the performance of the relevant obligation impossible*" is not met. The Respondents argue that a) the payment could have been made in a legal manner and b) a monetary debt can

never be considered objectively impossible (CAS 2022/A/8708) within the meaning of Article 119 SCO and that it has offered alternative ways to make the payment. For the Respondents, "*WHUFC cannot be liberated subject to its own incapacity and must assume the consequences of its delay, especially given that CSKA offered several alternative solutions allowing WHUFC to legally and effectively proceed with the payment through its bank*".

147. The Panel considers that the main disputed point among the Parties lies on whether the Sanctions Regime prevented the Appellant from performing its contractual obligation of payment of the Second Instalment and what are the legal consequences.

148. In this respect, even if an event is qualified as legal impediment or as a Force Majeure, this does not mean that the subjacent obligation is necessarily extinguished. Should the obligation not be extinguished, the question is whether it is impossible to fulfil on a temporary basis, the Panel shall assess if there is legal basis for a suspension or amendment which could allow to eventually perform the obligation, as alternatively requested by the Appellant in its second plea. In the discussion, the majority of the Panel decided that the issues to be addressed shall be the following:

A. Was the WHU prevented from making the payment of the Second Instalment under the Sanctions Regimes?

B. Is the obligation to perform the payment impossible as to lead to the extinction of the underlying obligation?

C. Interest

D. Is it possible to order payment through an escrow account created and overseen by FIFA?

E. Should the disciplinary sanction imposed by the DRC on the Appellant be amended?

149. The Panel will address these issues in turn below.

150. First of all, the Panel looks at the Second Respondent's statement that WHU's request to extinguish the payment obligation in its entirety shall not be admissible in this appeal, as it was not raised during the proceedings before the FIFA PSC and, therefore, such request exceeds the Panel's *de novo* power (CAS 2023/A/9870). The Panel agrees with FIFA in this point and considers that the request to extinguish the debt in its entirety is outside the Panel's scope of review in these proceedings. Therefore, the Panel focuses in the reasoning below on the question of the impossibility to pay the Second Instalment.

A. WAS THE WHU PREVENTED FROM MAKING THE PAYMENT OF THE SECOND INSTALMENT UNDER THE SANCTIONS REGIMES?

151. The Respondents submit that, by the time the Appealed Decision was rendered, CSKA had offered several alternative solutions allowing WHU to "legally" proceed with the payment of the Second Instalment to CSKA. In particular, the First Respondent claims

that the payment could have been legally processed to CSKA through AVO Capital (a CSKA shareholder), or to a third-party club (SC Heerenveen).

152. The Appellant claims it was unable to make payment to CSKA as CSKA is a person sanctioned under the Sanctions Regime or controlled by a person who is sanctioned. For WHU, the Sanctions Regime in place prevented it from sending money to CSKA.

153. The Panel recalls that, at the time of the facts at hand, the persons subjected to the Sanctions Regime were:

> -SDN by OFAC: (i) CSKA; (ii) VEB (Vnesheconombank) – CSKA's main shareholder at the time the sanctions were put in place and (iii) SOVCOMBANK (the bank designated in the Contract to receive the payments).
>
> -Designated Person by OFSI: (i) VEB (Vnesheconombank) and (ii) SOVCOMBANK.

154. The Panel observes that days before the Second Instalment was due, on 7 July 2022, CSKA informed WHU that CSKA had been included in the EU, UK and USA lists of designated persons. It asserted that it has been qualified as an SDN due to the fact that its main shareholder – VEB - had itself become an SDN.

155. In its correspondence to the Appellant dated 8 August 2022, CSKA explained that albeit VEB was no longer its shareholder, "*the change of the club's status in the banks and other financial institutions is rather long*" and therefore CSKA proposed two alternative routes for payment: a) payment to one of its shareholder AVO Capital, or b) payment to one of CSKA's creditors member of the football family (SC Heerenveen).

156. The Panel notes that CSKA's own understanding was that payments to CSKA could be more difficult or subject to specific permits based on the applicable regulations as it was an SDN under OFAC lists.

157. CSKA did not mention however that it was not a Designated Person in the UK lists.

158. On 13 October 2022 and then on 23 February 2023, Barclay's informed its position to WHU, according to which:

> -CSKA had a status of SDN in the USA, and that, in accordance with Barclay's Sanctions Policy, "*any banking activity involving Russia is restricted if it involves an entity subject to sanctions by the European Union, the Government of the United Kingdom and/or the US Government*". It clarified that payment to CSKA or to the benefit of CSKA would amount to the circumvention of the sanction regime. Therefore, no payment to AVO Capital was possible either.
>
> -CSKA's bank Sovcombank was also an SDN under OFAC and a Designated Person in the UK Sanctions List, so it would not be able to make payments to this bank.
>
> -The payment to the third-party club had also to be denied because the SC Heerenveen's exemption only allowed for the direct receipt by SC Heerenveen of the

amounts owed by CSKA That same exemption did not the receipt of sums by SC Heerenveen form a third party on behalf of CSKA.

-Finally, it concluded that it remained unable to facilitate payment unless (i) a licence was granted by OFSI and (ii) due diligence was undertaken by WHU.

159. It follows that making payment to CSKA, directly or indirectly, required a Licence.

160. The Panel evaluated whether under the above-mentioned circumstances, the Appellant could have made the payment of the Second Instalment through alternative ways, however, the majority of the Panel disagrees with the First Respondent that such alternative payments could be made. The refusal from Barclay's to authorize the Appellant's payment to CSKA results from the fact that CSKA was the target of sanctions. In addition, the Panel discussed which party to the Transfer Agreement had which duties and the majority of the Panel is of the opinion that since CSKA itself was subjected to sanctions it is CSKA which failed to prove the existence of possible alternative legal routes for it to receive the due payment.

161. The majority of the Panel does not agree either with the Respondent's assertions that the restrictions do not apply to WHU, but to its bank Barclay's and that it "*can freely access its bank accounts and organize its money transfers as it sees fit -although not directly to the First Respondent or its bank – so that we cannot consider that it is impossible for it to perform its financial obligations toward CSKA for reasons not within its control".* In fact, the majority of the Panel recalls that the restrictions apply to CSKA, as an SDN, as well as to its bank Sovcombank and not to WHU or its bank Barclay's. As a consequence, WHU is not free to transfer moneys to CSKA (be it through a bank or to a third entity).

162. CSKA has mentioned, without further details, that some European and Swiss clubs have been able to pay Russian clubs, even though the Russian Clubs were subject to sanctions. When discussing this, the majority of the Panel does not find it appropriate or relevant in the present case to compare the approaches taken by other entities subjected to the EU and Swiss sanctions regimes, whereas the case at hand is governed by the UK regime. Therefore, any payments made to Russian clubs under other sanction regimes different from the one at stake in the present case do not enlighten the resolution of this case.

163. The majority of the Panel further notes that alternative payment routes to CSKA, such as payments through its shareholders or through a third party, without a License characterize an undue attempt to circumvent the applicable sanction regimes.

164. The majority of the Panel believes this was also the FIFA PSC's view in the Appealed Decision, since its findings rely on the fact that the Appellant should have made all the necessary efforts to request a licence which, in the FIFA PSC's view, it has not. Therefore, payment through a third party was not an option available in the circumstances.

165. The Parties brought to the attention of the Panel that OFSI has recently explained that while WHU will not, in principle, need a licence to pay CSKA, there is still a doubt whether a Designated Person could be controlling CSKA. In the Panel's opinion, this issue could possibly still prevent the payment to be made to date, both in a direct manner

to CSKA, or through a third party (namely, SC Heerenveen as the Dutch Finance Ministry has still not approved the agreement). In the view of the majority of the Panel, it is a striking feature of this case that CSKA shareholders' controlling interests have not yet been determined by OFSI.

166. The majority of the Panel concludes that no alternative legal routes were available to pay CSKA at that time, as CSKA was under the UK and the USA Sanctions Regimes. The only possible manner to make a payment was if a licence or authorisation from state authorities was granted.

167. WHU has thus proved, to the satisfaction of the majority of the Panel, that the Sanctions Regimes prevented it from fulfilling its payment obligation to CSKA.

C. IS THE OBLIGATION TO PERFORM THE PAYMENT IMPOSSIBLE AS TO LEAD TO THE EXTINCTION OF THE UNDERLYING OBLIGATION?

168. In general, the legal consequences of the non-performance of a contract depend on whether the impossibility to discharge the obligation is temporary or permanent. The Panel will now analyse whether the performance of the payment obligation had become impossible in a permanent manner or on a temporary basis.

169. The First Respondent argues that a monetary debt can never be considered impossible within the meaning of article 119 SCO ("*[a]n obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor*").

170. The Panel agrees with the First Respondent that a monetary obligation, under the rule "*genera non pereunt*", can never be considered impossible to perform so as to lead to the extinction of the underlining obligation. Based on Article 84 para 1 SCO: *"[p]ecuniary debts must be discharged in legal tender of the currency in which the debt was incurred*", the Swiss Federal Tribunal ("SFT") has stated in its decision 4A_474/2009 of 25 May 2010 that the fulfilment of a pecuniary debt may never become impossible.

171. As a consequence, the Panel is of the opinion that WHU's obligation to pay cannot be extinguished due its impossibility to be performed resulting from the applicable Sanctions Regimes. At best, such impossibility is temporary, which will be addressed below. Since it is a money payment obligation, it can always be performed at some point in time. Therefore, the Panel denies the Appellant first plea.

172. With regards to the second plea of the Appellant, according to which there is a temporary impossibility to pay, the Panel notes that there is a debate under Swiss doctrine on whether to apply the rules of the '*demeure*' under article 97 et al SCO should apply or the rules of the '*impossibilité passagère*' or temporary impossibility (i.e. suspension of payment) until payment becomes possible.

173. The majority of the Panel considers that, due to the Sanctions Regime in place in the UK, there was a legal impossibility for the Appellant to pay for the time being. The sanctions regime is imposed on all UK debtors in situations in which the creditors are of Russian

nationality and is ta '*loi de police*' for any UK debtor in such situation. The intervention of the mechanism of the '*lois de police*' imposes a specific legal regime (in this case, the Sanctions Regime) in a unilateral manner to the individuals subject to such mechanism (in this case, the UK debtors). Such legal regime removes the compliance of an obligation (that becomes forbidden by the regime imposed) from the control of the individuals' will. In other words, UK debtors become prevented from performing their payment obligations regardless of their will.

174. Due to the fact that the impossibility is temporary, and applicable to all UK debtors in similar situations, the majority of the Panel follows the SFT jurisprudence ATF 44 II 519, of 1918, which considers that when the performance of an obligation to deliver a product is temporarily impossible due to an embargo or war, the obligation is suspended (but not extinguished). See also PICHONNAZ/NUSSBAUMER; "Les contrats de la construction en temps de crise, p : 53, referring to the COVID -19 situation when the authorities have in certain cases closed ongoing works : « *Une jurisprudence, certes très ancienne, du Tribunal fédéral de 1918, précise que lorsqu'il résulte dans ce cas une impossibilité temporaire, il est exclu de recourir au droit de résoudre le contrat ; les obligations doivent alors simplement être suspendues, sans que le débiteur ne soit en demeure*»). (Free translation into English: [a] very old case law of the Swiss Federal Supreme Court from 1918 specifies that when a temporary impossibility arises in such a case, the right to cancel the contract is excluded; the obligations must then simply be suspended, without the debtor being in default).

175. The majority of the Panel concludes therefore that the Appellant was not in default due to the legal impossibility to make payment. However, the underlying payment obligation is not extinguished.

176. As a consequence, the majority of the Panel agrees with the Appellant that the payment of the Second Instalment shall be suspended until the UK Sanctions Regime have ended or been amended on terms that enable WHU to make payment to CSKA.

177. Section 4 of the Appealed Decision will therefore read as follows:

"The Respondent, West Ham United Football Club must pay to PFC CSKA the following amount (s), when a Licence allowing payment is obtained from OFSI and/or the UK Sanctions Regime have ended or been amended in terms that enable West Ham United Football Club to make the payment to CSKA (the "**Due date**").

D. INTEREST

178. The Appealed Decision awarded CSKA interest at the rate of 5% per annum on the outstanding amounts as from 1 August 2022 until the date of effective payment.

179. In view of the fact that the majority of the Panel has decided that the payment shall only take place when a License is obtained or the UK Sanctions have ended or been amended in terms that enable the Appellant to make the payment to CSKA, the sum awarded should only accrue interest from the date in which one of the two above-mentioned events takes place.

180. The majority of the Panel therefore decides that the Appealed Decision, section 2 reads:

> "EUR 8, 550, 266.767, plus 5% interest p.a. as from the Due Date until the Date of the effective payment."

E. IS IT POSSIBLE TO ORDER PAYMENT TRHOUGH AN ESCROW ACCOUNT CREATED AND OVERSEEN BY FIFA?

181. As a further alternative plea, the Appellant requests that WHU be ordered to make payment of the Second Instalment into a designated interest-bearing escrow account (created and overseen by FIFA).

182. At the hearing, FIFA informed that they do not have the means to create and oversee any escrow account.

183. The Panel thus dismisses this claim as the requested payment option is not available.

F. SHOULD THE DISCIPLINARY SANCTION IMPOSED BY THE DRC ON THE APPELLANT BE AMENDED?

184. The Appealed Decision condemns the Appellant to the following:

> *4. 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 player, 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 all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

185. In its Appeal Brief, the Appellant requests the Panel to declare that "*the Appellant shall not face any financial and/or sporting sanctions for non-payment of the Second Instalment to CSKA pursuant to Article 12 bis and/or Article 24 of the FIFA Regulations*".

186. Article 12 bis of the FIFA RSTP provides as follows:

> "*Overdue payables*
>
> […]
>
> *2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below*.
>
> […]

4. Within the scope of its jurisdiction (cf. article 22 to 24), the Football Tribunal may impose the following sanctions:

a) a warning;

b) a reprimand;

c) a fine;

d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods."

187. As stated by the Sole Arbitrator in CAS 2022/A/9282: "*According to the principle of the association's autonomy, under Swiss law, the right of associations to impose sanctions or disciplinary measures on clubs is the expression of the freedom of associations and federations to regulate themselves (CAS 2019/A/6278 para. 46; CAS 2008/A/1583 & 1584 para. 41 and references; CAS 2005/C/976 & 986, para. 125). Under these circumstances, significant deference must be given to the autonomy of the sporting association, the decision of which must be subject to review only in cases such as arbitrariness, misuse of discretionary power, discrimination, breach of any relevant mandatory legal principle or if the decision entails a violation of the federation's own statutes and rules (among several cases CAS 2020/A/7090; CAS 2018/A/5888). The Sole Arbitrator concurs with the finding of another CAS Panel CAS 2022/A/9282 Al Batin Club v. Mohamed Rayhi & FIFA - Page 15 according to which "[a] mere disagreement of CAS panels with the level of sanction(s) imposed does not suffice, in and of itself, to undo a decision of disciplinary nature. CAS panels must satisfy themselves that the sanction(s) are evidently and grossly disproportionate to the offence, before proceeding to rescind the sanction(s) imposed."(CAS 2019/A/6345 as quoted in CAS Bulletin 2022/02 p. 41)."*

188. In view of the findings above, the majority of the Panel sees reason to amend the disciplinary sanction imposed by the Chamber on the Appellant as follows: "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 the Due Date, the following **consequence** shall apply:

IX. COSTS

(…)

****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 17 May 2023 by West Ham United Football Club against the decision rendered on 31 March 2023 by the FIFA PSC is partially upheld.

2. The Decision issued on 31 March 2023 by FIFA PSC is partially annulled and points 2, 4 and 5 are replaced with a new decision stating that:

   -2. The Respondent, West Ham United Football Club must pay to PFC CSKA the following amount (s), when a Licence allowing payment is obtained from OFSI and/or the UK Sanctions Regime have ended or been amended in terms that enable West Ham United Football Club to make the payment to CSKA (the "**Due date**"):

   - EUR 8,550, 266.767, plus 5% interest p.a. as from the Due Date until the Date of the effective payment.

   -4. 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 the Due Date, the following **consequence** shall apply:

   - The Respondent shall be banned from registering any new player, 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.

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

3. (…).

4. (…).

5. With dismissal of any other request submitted by the Parties.

Seat of arbitration: Lausanne, Switzerland
Date: 30 May 2025

THE COURT OF ARBITRATION FOR SPORT

Ms Carmen Núñez-Lagos
President of the Panel

Mr David Phillips KC
Arbitrator

Mr Bernhard Welten
Arbitrator