



Arbitration CAS 2013/A/3194 S.C. F.C. Universitatea Cluj S.A. v. Romanian Football Federation (RFF) & Romanian Professional Football League (RPFL), award of 18 November 2013 (operative part of 5 July 2013)

Panel: Mr Patrick Lafranchi (Switzerland), President; Mr Rui Botica Santos (Portugal); Mr Daniel Visoiu (Romania)

Football

Refusal to grant a license for participation in a national championship to a club under insolvency proceedings

Effect of insolvency proceedings on the due date of debts

Effect of insolvency proceedings in the national system of club licensing

Additional condition to ensure financial stability

1. **The Romanian Insolvency Law, once an insolvency proceeding is formally opened, modifies and respectively *defers* the due date of all the debts of the obligor and thus intervenes in contractually defined stipulations between the debtor and its creditors. In consequence, the statute of limitations period gets suspended due to the fact that the statute of limitations period only runs while a claim is mature.**
2. **The National Club Licensing Regulation (NCLR) has to be interpreted in the light of the Insolvency Law in order to ensure the uniformity of the Romanian legal system. As a consequence, a club over whom an insolvency procedure in the sense of the Insolvency Law was opened does not have overdue payables in the sense of the NCLR.**
3. **A *deferral* of the liabilities does not guarantee the necessary financial stability of a license applicant during the licensing season. Therefore, to ensure such financial stability, a license can only be granted to a candidate under insolvency proceedings under the condition that a reorganization plan will be approved by the syndic judge up to 31 May of the year in which the licensing season starts.**

I. INTRODUCTION

1. This appeal is brought by S.C. F.C. Universitatea Cluj S.A. (hereinafter referred to as “the Appellant” or “Cluj”) against a decision of the Appeal Committee for the Licensing of Clubs of the Romanian Football Federation dated 10 May 2013 (hereinafter also referred to as “the Appealed Decision”), confirming the refusal to grant Cluj the licence for the participation in Liga I of the Romanian Professional Football League.

II. THE PARTIES

2. Cluj is a Romanian football club, affiliated with the Romanian Football Federation (hereinafter also referred to as “RFF”) which in turn is affiliated with the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”).
3. RFF is the governing body of Romanian football and exercises regulatory, supervisory and disciplinary functions over clubs, officials and players in Romania. It is affiliated with the Union des Associations Européennes de Football (“UEFA”) and the FIFA. The Romanian Professional Football League (hereinafter also referred to as “RPFL”) manages the First and Second Leagues of the Romanian football league system.

III. FACTUAL BACKGROUND

4. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in its Award only to the submission and evidence it considers necessary to explain its reasoning.
5. In the season 2012-2013 Cluj finished in the 12th position of the Romanian Liga I. Hence, from a sporting-perspective, for the season 2013/2014 it would not be relegated to Liga II.
6. On 29 January 2013 Cluj requested the opening of insolvency proceedings as a result of becoming insolvent and due to its incapacity to fulfil its business obligations.
7. On 6 February 2013 the insolvency judge granted the petition of the Appellant filed on 29 January 2013 and opened the insolvency proceedings. The court appointed S.P. Global Money Recovery IPURL as a judicial administrator with the powers described in Art. 20 of Romanian Law no. 85/2006 (hereinafter referred to as “the Insolvency Law”). In addition, the court appointed a special administrator whose main responsibilities were to represent Cluj’s interests (including its shareholders) during the insolvency procedure, to assist with the preparation of the reorganization plan and to manage Cluj’s day-to-day activities under the supervision of the appointed judicial administrator (Art. 18 of the Insolvency Law).
8. On 29 March 2013 Cluj submitted its licence application for the sporting season 2013/2014, requesting the granting of the licence for the participation in the UEFA club competitions and of the licence for the national championship of the Romanian First League.
9. On 22 April 2013 the financial expert consulted by the RFF, BDO Audit, filed a financial report to the RFF analysing the licensing files of Cluj relating to the 2013/2014 sporting season. Therein, BDO Audit ascertained overdue payables of Cluj towards football clubs as per 31 March 2013, resulting from transfer activities that occurred prior to 31 December 2012, in the amount of RON 55,744.00. The overdue payables as per 31 March 2013 towards employees and social/tax authorities based on contractual and legal obligations that arose

prior to 31 December 2012 amounted to RON 2,808,262.00 towards employees and RON 1,810,217.00 towards the tax authority.

10. On 22 April 2013 the licensing manager Viorel Duru – in his final report to the Club Licensing Commission – proposed the refusal of the licence for Cluj, due to the fact that Cluj would not meet the minimum requirements of Arts. 46, 47 and 49 of the National Club Licensing Regulation, edition 2012 (hereinafter referred to as “the NCLR”).
11. On 22 April 2013 the reorganization plan, submitted by Cluj to the specialized court, was approved by 42.72% of Cluj’s creditors.
12. On 26 April 2013 the Club Licensing Commission rejected the application of Cluj regarding the granting of the licence for the 2013/2014 season, that is to say it refused to grant Cluj the licence for the participation in the UEFA club competitions and in the First League national championship.
13. On 30 April 2013 the Appellant lodged an appeal against the decision rendered by the Club Licensing Commission.
14. On 3 May 2013 BDO Audit, on behalf of the RFF, assessed the additional documentation submitted by Cluj with its appeal against the decision of the Club Licensing Commission. BDO Audit evaluated in particular the reorganization plan approved on 22 April 2013 by Cluj’s creditors. In the end, BDO Audit came to the conclusion that the reorganization plan would not change its position expressed in the report issued on 22 April 2013.
15. On 6 May 2013 the licensing manager Viorel Duru made a final report to the Appeal Commission for the licensing of Clubs, based on the documentation submitted by Cluj with its appeal against the first instance body. He proposed the dismissal of the appeal and the maintaining of the decision of the first instance.
16. On 10 May 2013 the Appeal Commission for the Licensing of Clubs of the RFF rejected the Appeal lodged by Cluj and upheld the decision of the Commission for the Licensing of Clubs issued on 26 April 2013.
17. On 29 May 2013 the reorganization plan of the Appellant got confirmed by the syndic judge pursuant to civil judgment no. 1554.

IV. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

18. On 30 May 2013, the Appellant, in accordance with Art. R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), filed a statement of Appeal against the Decision rendered by the Appeal Commission for the Licensing of Clubs of the RFF issued on 10 May 2013 together with an application for provisional measures.
19. On 10 June 2013, in accordance with Art. R51 of the Code, Cluj submitted its appeal brief.

20. On 18 June 2013, in accordance with Art. R55 of the Code, the RFF filed its answer to the appeal, requesting analogously the rejection of the Appellant's request. On the same date, also the RPFL lodged its answer, pleading for granting Cluj the licence for the sports season 2013/2014.

V. THE DISPUTE BETWEEN THE PARTIES

A. Decision of the Club Licensing Commission

21. On 26 April 2013 the Club Licensing Commission issued a decision holding amongst others that:
- a. Based on the table of payables towards football clubs in conjunction with the report of the financial expert, on 31 December 2012, the licence applicant had a debt of RON 94,185.00. Out of this amount, the relevant amount for licensing purposes was RON 55,744.00. Cluj had not proven to have paid this amount until 31 March 2013.
 - b. The Commission found, based on the report of the financial expert and the employee payables table submitted by the club that the amount of RON 2,808,262.00, payable at 31 December 2012, had not been paid by 31 March 2013.
 - c. After having checked the statement of payables towards the tax authorities the Commission concluded that the finding of the financial expert according to which the amount of RON 1,810,217.00 had not been paid until 31 March 2013 was correct.
 - d. The claim of the licence applicant - according to which the payables were no longer overdue following the opening of the insolvency proceedings on 6 February 2013 - was ill-founded as payables would continue to exist even though an insolvency proceeding was opened, keeping the same form and nature until the approval of the reorganization plan by the syndic judge.
 - e. Based on these grounds the Commission found that the minimum requirements of Arts. 46 and Art. 47 of the NCLR were not met and that for this reason the application should be rejected.
 - f. Further, the Commission found that the licence applicant did not prove its ability to continue as a going concern until the end of the licence season. Cluj therefore would also not have fulfilled the minimum requirements provided for in Art. 49 of the NCLR. Based on these findings and pursuant to Art. 22 letter (c) item (ii) of Annex VII of the NCLR, the Commission refused to grant the Appellant the licence.

B. Decision of the Appeal Commission for the Licensing of Clubs

22. On 10 May 2013, the Appeal Commission for the Licensing of Clubs issued a decision holding amongst others what follows:
- a. It found that the appeal lodged by Cluj was ungrounded in all respects. The existence of overdue payables relevant for the licensing process as at 31 March 2013, which originated in the financial year ending on 31 December 2012, had not been contested even by the licence applicant. As a matter of fact, the lack of sufficient available monetary funds for the payment of the uncontested, quantifiable and outstanding debts had been the main reason for the opening of the general insolvency proceedings on 6 February 2013, pursuant to Art. 32 Para. 1 of the Insolvency Law.
 - b. The Appellant argued that the amounts subject to a claim originating prior to the opening of the proceedings (6 February 2013) were no longer due and therefore could not be deemed overdue except for the case that the due dates indicated in the reorganization plan would not be observed. The Appeal Commission did not accept this argument. From its point of view Art. 102 Para 1 of the Insolvency Law unequivocally indicates that the claims and rights of the creditors shall change according to the reorganization plan only upon the approval of the reorganization plan under a judgment by the syndic judge.
 - c. Art. 102 of the Insolvency Law respectively its Para. 3 clearly describes the situation and possible consequences of a debtor whose reorganization plan has not yet been approved. Therefore, the Licensing Commission was correct in stating that as long as the syndic judge has not approved a reorganization plan, the applicant would be within the observation and not within the reorganization period. In consequence, the Appeal Commission for the Licensing of Clubs could not accept that the due dates for the payment of the club's debts have been delayed as a result of rescheduling under a financial rehabilitation plan.
 - d. From the point of view of the Appeal Commission for the Licensing of Clubs, the allegation of the licence applicant that the payables would no longer be due as a result of the opening of the insolvency proceeding is a contradiction in terms as insolvency is a direct consequence of the lack of sufficient available monetary funds for the payment of the uncontested, quantifiable and outstanding debts, as per the definition of insolvency under Art. 3 Para. 1 of the Insolvency Law.
 - e. Hence, the Appeal Commission rejected the appeal lodged by Cluj as ungrounded and upheld the decision of the Commission for the Licensing of Clubs.

VI. THE CONSTITUTION OF THE PANEL AND THE HEARING

23. By letter dated 21 June 2013 the CAS informed the parties that the Panel had been constituted with the following arbitrators: Mr Patrick Lafranchi, attorney-at-law in Bern, President of the

Panel, Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal and Mr Daniel Visoiu, attorney-at-law in Bucharest, Romania.

24. With the same letter the CAS informed the parties that the Panel would hold a hearing in this matter on 1 July 2013 at 2pm.
25. On 26 June 2013, the CAS submitted the Order of Procedure to the parties. The Appellant signed it on 26 June 2013 and brought it to the hearing. The RPFL signed and submitted it to the CAS with its letter issued on 27 June 2013. The RFF however did not sign the Order of Procedure.
26. The hearing was held on 1 July 2013. The Appellant was represented by its attorney Mr. Gianpaolo Monteneri, Cristea David Raluca Maria (legal adviser of Cluj), Marginean Ioan (special administrator), Iordanescu Anca Alina (judicial administrator and translator) and Tudose Laurentiu Constantin (judicial administrator). For RPFL on the other hand, its attorneys Mr. Ciubota Catalin and Mr. Mincu Paul Alexandru attended the hearing. The RFF did not send any representatives. At the closing of the hearing, the Parties present did explicitly express their satisfaction as to how their right to be heard and to be treated equally had been fully observed.

VII. POSITIONS OF THE PARTIES

27. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made.

A. Position of Cluj

28. The Appellant holds the following point of view:
 - a. The domestic licensing procedure is a procedure that falls under the sole competency of the national association, wherefore the Romanian Insolvency Law becomes key for the licensing procedure. The NCLR therefore should be interpreted in the light of the Insolvency Law.
 - b. By letter dated 19 December 2012, the RFF informed all clubs of the Romanian League that the new adopted UEFA licensing requirement, specifically that a club that entered into insolvency in the last 12 months before the relevant UEFA competition season starts could not be granted a license for the relevant season, would not apply for the obtainment of a license for the national Romanian competitions.

- c. Since 6 February 2013, when the syndic judge admitted the request for opening the insolvency proceeding any and all of the Appellant's activities have become strictly subject to the provisions of the Insolvency Law as well as to the resolutions of the competent jurisdiction.
- d. Arising from Art. 36 and Art. 40 of the Insolvency Law, the Appellant was prescribed from performing any activities for taking any decisions for meeting the requirement of the Romanian club licensing system, even those being in compliance with the NCLR. The debts of the Appellant thus have to be considered as not yet outstanding in the sense of Art. 1(b) of Annex VI of the NCLR.
- e. Further, the proceedings for the registration of the creditors' demands are also in full compliance with Article 2(c) of Annex VI of the NCLR as this is clearly a pending procedure before the appropriate arbitrary court aimed at the settlement of outstanding debts in the meaning of the legal provision in question.
- f. Hence, the Appellant considers that it acted at all stages in accordance with the applicable Romanian law and with due consideration of the Insolvency Law as well as with the financial requirements established in Arts. 46 and 47 of the NCLR. Furthermore, by confirming the reorganisation plan, the syndic judge cancelled all stipulations regarding non-compliance with the principle of non-sustainability established in Art. 49 of the NCLR for the period of three years.

B. Position of the RFF

- 29. The RFF did not put forth any arguments in support of its analogously submitted request for rejecting the appeal.

C. Position of the RPFL

- 30. The RPFL in contrast pleaded for granting Cluj a license for the sporting season 2013/2014. It brought forth the following arguments:
 - a. If one of the teams ranking 1-14 (which are free from relegation) fails to receive the license to participate in the new season, as it is the case with Cluj, then the Professional Football League would come to a standstill. In this case the RPFL would be forced to organize the championship with a number of 17 teams due to the fact that the RFF annulled a provision stating that the place of a team that fails to receive a license to participate in the First League is to be taken by the first relegated team with a license to participate.
 - b. The value of the television rights assigned to the TV operators by the RPFL would decrease if Cluj would be relegated to the second League due to the fact that such a

relegation would entail financial consequences on all Clubs participating in the First League.

- c. Once the procedure of insolvency was triggered on 6 February 2013 Cluj lost any possibility to freely pay the relevant debts for the licensing process, despite the fact that the deadline for their payments came to an end on 31 March 2013.
- d. With the opening of the insolvency proceeding Cluj was deprived of its management rights as a judicial administrator was appointed.

VIII. THE PARTIES' REQUESTS FOR RELIEF

31. The Appellant's main requests for relief are the following:

The Appellant requests the Panel:

- 1. *To accept the present appeal against the Challenged Decision;*
- 2. *To set aside the Challenged Decision;*
- 3. *To order the First Respondent to issue the licence authorizing the Appellant to participate in Liga I in the 2013/14 football season;*
- 4. *To order the Second Respondent to include the Appellant in the Liga I championship for the 2013/14 football season;*
- 5. *To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred*
- 6. *To establish that the costs of the arbitration procedure shall be borne by the Respondents.*

32. Cluj further formulated the subsequent requests for the granting of provisional measures:

- 1. *To accept the Appellant's request for stay of the execution of the challenged decision;*
- 2. *To allow the Appellant to proceed with the participation in Liga I championship in the 2013/14 football season, pending the outcome of the final award on the matter.*

33. The Respondents did not formally state requests for relief. Correspondingly, the RFF pleaded for a rejection of the appeal.

The RPFL supported the Appellant's prayers for relief.

VIII. THE ADMISSIBILITY OF THE APPEAL AND CAS JURISDICTION

34. According to Art. 176 Para. 1 of Switzerland's Federal Code on Private International Law (hereinafter referred to as "CPIL") the provisions of the articles 176 ff. CPIL apply if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland. The seat of the present arbitration is situated in Lausanne in Switzerland (R28 of the Code). None of the parties are domiciled or habitually resident in Switzerland. The articles 176 ff. CPIL therefore apply to the present case.
35. According to Art. 186 Para. 1 of the CPIL the arbitral tribunal shall rule on its own jurisdiction. The objection of a lack of jurisdiction must be raised at the latest prior to any defence on the merits. However, it is in the parties' own discretion to define an earlier deadline, for example by referring to an arbitration regulation (HEINI A., in: Zürcher Kommentar zum IPRG, N 10 f. to Art. 186 CPIL).
36. Except if a Respondent is in default, the arbitral tribunal examines its jurisdiction only if an exception of inadmissibility is raised and not ex officio (KELLERHALS/BERGER, Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Rz. 626; (HEINI A., in: Zürcher Kommentar zum IPRG, N 7 to Art. 186 CPIL).
37. Art. R55 of the Code defines that Respondents have to raise an objection of incompetency at the latest in their answer. Afterwards their right to raise a plea of non-jurisdiction is forfeited. In fact, none of the Respondents brought forward an exception of the lack of competence, neither in their written answer nor during the hearing. On the contrary, they explicitly recognised the jurisdiction of the CAS (cf. p. 2 of the answer of the RFF and the answer of the RPFL). The present dispute is an arbitral one in the sense of Art. 177 Para. 1 CPIL. The CAS is therefore competent to decide the present matter.

IX. MERITS

A. Applicable Law

38. Article R58 of the Code provides that the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled, or according to the rules of law, the application of which the Panel deems appropriate.
39. In the present case, the NCLR and the Insolvency Law are applicable in priority. The NCLR on the one hand defines the licensing procedure for Clubs applying for a license of Liga I of the RPFL. The Insolvency Law on the other hand is applicable for all entities with seat in Romania. The Panel will therefore primarily examine the appealed decision in the light of those regulations. If necessary, gap-filling, thus subsidiary norms will be determined later on.

B. Relevant provisions

1. NCLR

40. *Art. 15 NCLR: General*

1 With the exception of those defined in paragraph 2 below, the criteria defined in this chapter [Art. 15 – 50] must be fulfilled by clubs in order for them to be granted a licence to enter the national First League and Second League, as well as UEFA club competitions.

2 Non-fulfilment of the criteria defined in Articles 21, 22, 25, 34, 38, 40, 41 and 50 does not lead to refusal of a licence but to a sanction defined by the licensor according to its catalogue of sanctions (see Article 7) presented in Annex II.

41. *Art. 46 NCLR: No overdue payables towards football clubs*

1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VI) that refer to transfer activities that occurred prior to the previous 31 December.

2 Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FRF Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.

42. *Art. 47 NCLR: No overdue payables towards employees and social/tax authorities*

1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VI) towards its employees as well as social/ tax authorities as a result of contractual and legal obligations towards its employees that arose prior to the previous 31 December.

2 The provision of the lack of overdue payables towards social / tax authorities does not apply to the licence applicant for the issuance of the license to participate in the National Second League championship in 2013-2014 season.

3 Payables are those amounts due to employees or social/ tax authorities as a result of contractual or legal obligations towards employees. Amounts payable to people who, for various reasons, are no longer employed by the applicant fall within the scope of this criterion and must be settled within the period stipulated in the contract and/ or defined by law, regardless of how such payables are accounted for in the financial statements.

43. *Art. 49 NCLR: Future financial information*

1 The licence applicant must prepare and submit future financial information in order to demonstrate to the licensor its ability to continue as a going concern until the end of the licence season; if it has breached any of the indicators defined in paragraph 2 below, the prospective financial information shall be reviewed by the same auditor who has audited the annual financial statements.

44. **ANNEX VI: The term of “outstanding financial debts ”**

1. Financial debts are deemed outstanding if they are not settled in due term, as agreed and in compliance with the contracts or the legal obligations in force.

2. Financial debts are not deemed outstanding, subject to the meaning of the herein regulations, the licence applicant (the debtor club) can prove until March 31st (according to articles 46 and 47) that:

a) It fully settled the amount in question; or

b) The club has concluded an agreement with the creditor by which the creditor accepted in writing the extension of the payment term after the running out of the applicable term (note: failure of the creditor to require settlement of the payment is not an extension of the term); or

c) The club filed a court action that was registered by the appropriate authority in compliance with the national legislation or opened a procedure before national or international football authorities or the appropriate arbitrary court by which to challenge the obligation to settle outstanding debts; nonetheless if the legal bodies within the national system for the licensing of clubs believes that the action in court or the procedure had been opened solely in order to avoid applicable stipulated terms of the herein regulations (in order to buy time), the amount in question is deemed outstanding financial debt; or

d) The club challenged, before the appropriate authority as invested by the national legislation or before the national or international football body or before the appropriate arbitrary court, an action filed against it by a creditor regarding outstanding financial debts and can prove to an extent accepted by the legal bodies within the national system for licensing of clubs it had founded arguments supported by evidence in order to challenge the filed action or procedure; nonetheless, if the legal bodies within the national system for licensing of clubs believes that the grounds pursuant to which the challenge of the action or procedure was made were obviously unfounded, the amount in question is deemed outstanding financial debt.

2. **Insolvency Law**

45. **Art. 36**

From the date of opening the procedure is suspended of right all the judicial actions, extrajudicial or the measures of forced enforcement for the performance of the receivables on the debtor or its assets.

46. **Art. 40**

The opening of the procedure suspends any statute of limitations pertaining to those actions provided under art. 36.

47. **Art. 102**

(1) When the decision that confirms a plan is enforced, the activity of the debtor is reorganized accordingly; the receivables and the rights of the creditors and of the other interested parties are modified as it is provided in the plan. In case of entering in bankruptcy following the failing of the plan or of a forced execution, the confirmed

plan will be considered as a definitive and irrevocable decision against the debtor. For the forced execution of these receivables the quality of executor title will have the decision of confirmation the plan.

(2) The creditors preserve their actions, for the entire value of the receivables against the co-debtors and the fidejussors of the debtor, even if they voted for the acceptance of the plan.

(3) If no plan is confirmed and the term for the proposal of a plan, in the conditions of art. 94, expired, the syndic judge will dispose the beginning of the bankruptcy procedure, in the conditions of art. 107 and the following.

(4) The remunerations of the persons appointed based on art. 10, art. 19 parag. (2), art. 23, 24 and of art. 98 parag. 3 and other administrative expenses will be paid at the moment established, depending on the case, by the law, with the exception of the cases when the interested parties would accept, in writing, other payment terms. The plan has to specify in the payment schedule how this payment will be assured.

(5) Payments can be made on a semester basis, based on legal documents.

C. Facts of the case

48. The RFF correspondingly brought forward that Cluj would have outstanding debts in the amounts mentioned in the BDO reports issued on 22 April 2013 and on 3 May 2013. The BDO reports refer to the following payables:
 - RON 55,744.00 resulting from transfer activities that occurred prior to 31 December 2012.
 - RON 2,808,262.00 towards employees based on contractual and legal obligations that arose prior to 31 December 2012.
 - RON 1,810,217.00 towards the tax authority based on contractual and legal obligations that arose prior to 31 December 2012.
49. In its appeal Cluj did not contest the quantum of the amounts but only the conclusion that these payables would be outstanding in the sense of the NCLR. The Parties did not regulate the procedure of assessing evidence, neither by direct contractual provision nor by reference, since the Code does not contain a rule regarding the assessment of evidence.
50. The Panel therefore declares Art. 150 ZPO (*"Evidence is required to prove facts that are legally relevant and disputed."*) based on Art. 182 CPIL (*"If the parties have not regulated the procedure, it shall be fixed, as necessary, by the arbitral tribunal either directly or by reference to a law or rules of arbitration"*) as applicable. Correspondingly, unchallenged facts are to be considered as formally true (GUYAN P., in: Basler Kommentar zur Schweizerischen Zivilprozessordnung, N 4 to Art. 150 ZPO). The Panel therefore considers the balances presented in the BDO reports as well as the facts arising from the insolvency proceedings involving Cluj as formally true and will thus use them as a basis of its award.

D. Legal Findings

1. Overdue payments

51. The central legal question to be examined hereafter is the legal effect of an insolvency procedure on overdue payments in the sense of Art. 46 and Art. 47 of the NCLR in conjunction with Annex VI of the NCLR. While the RFF holds the point of view that only the confirmation of a reorganization plan defers the due date of outstanding accounts, the Appellant and the RPFL argue that already the opening of an insolvency procedure result in a deferment of the relevant due dates.
52. According to Art. 1 of Annex VI of the NCLR, financial debts are deemed outstanding if they are not settled in due term, as agreed and in compliance with the contracts or the legal obligations in force. Thus, the Panel has to examine if the initiation of an insolvency procedure affects the due date of a debt.
53. An analysis of the Romanian insolvency proceeding brought to light that the Insolvency Law gives the debtor the possibility to initiate an insolvency proceeding by itself. The opening of an insolvency proceeding cannot be reached easily. An insolvency request is only granted if high exigencies are fulfilled, as can be seen in Art. 27-30 of the Insolvency Law.
54. Further, different provisions of the Insolvency Law assure that a debtor does not initiate an insolvency proceeding to abuse its rights. As an example, a debtor who was submitted to another insolvency proceeding 5 years prior to the decision of the opening of such a procedure is deprived of the right to formulate a request of juridical reorganization (Art. 30 of the Insolvency Law). Besides, a debtor who initiates an insolvency process in bad faith has to fear serious liability consequences (Art. 27 Para. 4 of the Insolvency Law). In addition, an insolvency procedure is closely linked with a major reduction of the debtor's freedom of action. As soon as a judicial administrator is appointed the latter supervises all management operations, administers the debtor's patrimony and preserves or terminates contracts concluded by the debtor or any responsibilities defined by the syndic judge (Art. 20 of the Insolvency Law). In conclusion, the initiation of an insolvency proceeding has to be seen as an *ultima ratio* measure (measure of last resort) taken by a debtor due to the tremendous negative consequences and the extensive loss of management freedom caused by the insolvency procedure.
55. According to Art. 36 of the Insolvency Law, from the date of the opening of the procedure onwards, all judicial or extrajudicial actions or the measures of enforcement for the performance of the receivables on the debtor or its assets are suspended. Art. 40 of the Insolvency Law further stipulates that the opening of the insolvency procedure suspends the statutes of limitations applicable to those actions described in Art. 36 of the Insolvency Law.
56. The Panel interprets these regulations in the sense that the Insolvency Law, once an insolvency proceeding is formally opened, modifies and respectively *defers* the due date of all

the debts of the obligor and thus intervenes in contractually defined stipulations between the debtor and its creditors. In consequence, the statute of limitations period gets suspended due to the fact that the statute of limitations period only runs while a claim is mature.

Considering these interpretations, the Panel holds the point of view that the NCLR has to be interpreted in the light of the Insolvency Law in order to ensure the uniformity of the Romanian legal system. If the Insolvency Law therefore determines that, once an insolvency proceeding is opened, all the debts of the requesting entity would be *deferred*, this matter of fact also has to be taken into account with respect to the NCLR. In consequence, a club over whom an insolvency procedure in the sense of the Insolvency Law was opened does not have overdue payables in the sense of Art. 1 of Annex VI of the NCLR in conjunction with Art. 2 lit. c of Annex VI of the NCLR, due to the fact that the Panel considers an insolvency procedure as a procedure in the sense of Art. 2 lit. c of Annex VI of the NCLR.

57. This conclusion goes hand in hand with the position of the RFF expressed in its letter dated 19 December 2012. Therein the RFF highlighted the fact that the UEFA provision determining that a club that was seeking protection or is still receiving protection from its creditors within the twelve months prior to the licensing season would not receive a UEFA licence (cf. Art. E Para. 4 of the Annex IX of the UEFA Club Licensing and Financial Fair Play Regulations, edition 2012), would not apply to the national Romanian licensing process. Out of the RFF's considerations the Panel concludes *e contrario* that a Club receiving protection from its creditors in the sense of the Insolvency Law can still receive a licence for Liga I. Considering that a Club seeking protection from its creditors has *deferred* debts, and that only a Club without *outstanding* debts is able to receive a licence for Liga 1, the RFF in its letter dated 19 December 2012 hence also held the point of view that a Club seeking protection from its creditors does not have "outstanding debts" in the sense of the NCLR. Therefore, even in the opinion of the RFF the wording "outstanding debts" in the sense of the NCLR has to be interpreted in the light of the Insolvency Law.
58. However, the Panel is aware of the fact that a *deferral* of the liabilities alone does not guarantee the necessary financial stability of a license applicant during the licensing season. The RFF, respectively the RPFL, need a sure enough likelihood that the participants of their Liga I are capable to fulfill their financial duties during the licensing season. Therefore, to ensure such a financial stability, the Panel considers the following additional conditions as appropriate in order that a club involved in an insolvency proceeding receives a sporting license:

If a license candidate is under the protection of Art. 36 of the Insolvency Law at the date on which the Club Licensing Commission takes its decision, a license for the Romanian Liga I has to be granted under the condition that a reorganization plan will be approved by the syndic judge up to a certain deadline prior to the commencement of the licensing season. The relevant reorganization plan must thereby not exclusively foresee the liquidation of all of the debtor's assets in the sense of Art. 94 of the Insolvency Law.
59. The Panel deems that 31 May of the year in which the licensing season starts as an appropriate reference date until which the competent syndic judge must approve the reorganization plan in order that a conditioned license becomes final. The deadline of 31 May gives the RFF

respectively the RPFL enough time to take into account a cancellation of a license and to seek for an alternative solution while planning the upcoming licensing season which would have a mid-July starting date. Hence, the reorganization plan of a license applicant involved in an insolvency proceeding would have to be approved by the syndic judge until 31 May, otherwise the correspondingly conditioned license would have to be deemed withdrawn. The Panel considers this arrangement as an adequate solution because it respects on the one hand the uniformity of the legal system and grants on the other hand the necessary legal certainty that the teams of the Romanian Liga I guarantee a certain financial viability standard.

60. *In casu*, Cluj at the moment of the decision of the Club Licensing Commission on 26 April 2013, was already involved in the insolvency proceeding and thus benefited from the protections stipulated in Art. 36 of the Insolvency Law. On 29 May 2013 the reorganization plan of the Appellant was confirmed by the syndic judge, with the relevant reorganization plan not requiring the liquidation of all of the assets of the Appellant. The Club Licensing Commission, respectively the Appeal Commission for the Licensing of Clubs of the RFF, therefore should have granted Cluj the license under the above mentioned condition. Due to the fact that in the instant case the reorganization plan of the Appellant was confirmed before 31 May 2013, its license for the sporting season 2013/14 for the Romanian Liga I should have become unconditioned on 31 May 2013.

2. Financial prognosis

61. According to Art. 49 Para. 1 of the NCLR the licence applicant must prepare and submit future financial information in order to demonstrate to the licensor its ability to continue as a going concern until the end of the licence season.
62. On 29 May 2013 the Appellant's reorganization plan got confirmed by the syndic judge. With the adoption of a reorganization plan the activity of the debtor is reorganized appropriately, i.e. in a way that the obligor will be able to recover financially and become financially sound again (please see Art. 102 of the Insolvency Law). If the financial prognosis of the debtor would not be promising, the reorganization plan would either schedule the liquidation of all the debtor's assets (please see Art. 94 of the Insolvency Law) or the specialized court would not confirm the plan. The Panel thus holds the point of view that the conditions elaborated under Section D./1. above shall also apply while considering the financial prognosis of an applicant. Therefore, as long as the insolvency procedure is opened before 31 March and the syndic judge would approve the plan before 31 May the criteria as mentioned in Art. 49 of the NCLR are to be considered as fulfilled. In consequence, *in casu* Cluj demonstrated its ability to continue as a going concern until the end of the licence season 2013/14.

3. Conclusion

63. Under these considerations, the Panel fully grants the appeal submitted by Cluj.

E. Provisional Measures

64. The requests for provisional measures of the Appellant became obsolete due to the fact that the appeal was granted in full as communicated to the Parties pursuant to the operative award issued on 5 July 2013.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed on 30 May 2013 by S.C. F.C. Universitatea Cluj S.A. against the decision rendered by the Appeal Committee for the Licensing of Clubs of the Romanian Football Federation on 10 May 2013 is upheld.
 2. The decision rendered by the Appeal Committee for the Licensing of Clubs of the Romanian Football Federation on 10 May 2013 is annulled.
 3. The Romanian Football Federation shall issue the licence authorizing S.C. F.C. Universitatea Cluj S.A. to participate in the Romanian Liga I for the 2013/2014 football season.
 4. The Romanian Professional Football League shall include S.C. F.C. Universitatea Cluj S.A. in the Liga I championship for the 2013/2014 football season.
- (...)
8. All other motions or prayers for relief are dismissed.