Arbitration CAS 2012/A/2806 SC Corinthians Paulista v. Panathinaikos FC, award of 17 December 2012 (operative part of 23 November 2012)

Panel: Prof. Massimo Coccia (Italy), President; Mr Markus Bösiger (Switzerland); Mr Hans Nater (Switzerland)

Football
Transfer
Proper interpretation of "net amount"
Burden of proof

1. **The proper interpretation of "net amount" is "without any deduction", in the sense that the agreed net amount must exactly correspond to the amount which is received in the creditor's bank account or is anyway collected by the creditor. It is a common understanding in the practice of sports contracts – particularly in employment contracts between clubs and footballers – that "net amount" refers to the final amount the creditor expects to receive in its bank account. Under this approach, all sorts of taxes, expenses and charges due to the tax authorities or to other third parties (for example the banks involved in the payment) in connection with the payment, whether recoverable or not by the creditor, are to be paid by the debtor on top of the agreed net amount.**

2. **It is well established CAS jurisprudence that a party pleading a fact must convince the Panel that said fact is true, accurate and produces the consequence envisaged by that party.**

I. INTRODUCTION

1. This appeal is brought forth by the Brazilian club SC Corinthians Paulista (hereinafter also the "Appellant" or "Corinthians") against a decision of the FIFA Players' Status Committee, which held that the Appellant did not entirely fulfil its contractual obligations towards the Greek club Panathinaikos FC (hereinafter also the "Respondent" or "Panathinaikos") under the "Professional football player registration transfer agreement" (hereinafter also the "Transfer Agreement") for the transfer of the player R. (hereinafter also the "Player"). The core of the dispute between the parties concerns the meaning of the term "net amount" contained in point 2 of the Transfer Agreement.

II. THE PARTIES

2. The Appellant SC Corinthians Paulista is a football club with its registered office in São Paulo, Brazil. It is a member of the Confederação Brasileira de Futebol (CBF), which has been affiliated to FIFA since 1923.

3. The Respondent Panathinaikos FC is a football club with its registered office in Athens, Greece. It is a member of the Hellenic Football Federation (HFF), which has been affiliated to FIFA since 1927.

III. BACKGROUND

4. This section of the award sets out a brief summary of the main relevant facts, as established on the basis of the parties' written submissions. Additional facts are set out, where material, in other parts of this award.

III.1 The Transfer Agreement

5. On 27 July 2008, the Brazilian club Clube de Regatas do Flamengo (hereinafter also "Flamengo") transferred the Player to the Respondent in exchange for the agreed net amount of EUR 3,000,000. The Respondent paid the net amount of EUR 3,000,000 to Flamengo and also EUR 750,000 to the Greek tax authorities as withholding tax.

6. On 30 December 2008, the parties signed the Transfer Agreement whereby the Appellant agreed to pay the "net amount" of EUR 1,300,000 to the Respondent and EUR 200,000 directly to the Player in exchange for said Player. The issue of taxes was not discussed during negotiations of this agreement.

7. The Transfer Agreement required payments in the following manner:

"2. In consideration of such transfer of the player registration, Corinthians agrees and obliges to pay to Panathinaikos, the net amount of one million five hundred thousand Euros (1.500.000 €) as follows:

1st installment: Two hundred thousand euros (200.000 €) directly to the player:

The above mentioned amount was due by Panathinaikos to the player until the signing of the present. From this point forward, it is mutually agreed, that Corinthians undertakes to pay the player the above mentioned amount, as the first installment of the transfer fee.

2nd installment: One hundred thousand euros (100.000 €) payable on 20.03.2009

3rd installment: One hundred thousand euros (100.000 €) payable on 20.04.2009

4th installment: One hundred thousand euros (100.000 €) payable on 20.05.2009

5th installment: One hundred thousand euros (100.000 €) payable on 20.06.2009

6th installment: One hundred thousand euros (100.000 €) payable on 20.07.2009

7th installment: One hundred thousand euros (100.000 €) payable on 20.08.2009

8th installment: One hundred thousand euros (100.000 €) payable on 20.09.2009

9th installment: One hundred thousand euros (100.000 €) payable on 20.10.2009

10th installment: One hundred thousand euros (100.000 €) payable on 20.11.2009

11th installment: One hundred thousand euros (100.000 €) payable on 20.12.2009

12th installment: One hundred thousand euros (100.000 €) payable on 20.01.2010

13th installment: One hundred thousand euros (100.000 €) payable on 20.02.2010

14th installment: One hundred thousand euros (100.000 €) payable on 20.03.2010".

8. It is common ground between the parties that the 1st installment of EUR 200,000, paid directly to the Player is not part of the present dispute.

9. However, with regard to the remaining EUR 1,300,000 to be paid in 13 monthly installments of EUR 100,000 each, the parties disagree as to the amount already paid and, consequently, as to the amount yet to be paid. The Appellant claims that – based on its interpretation of "net amount" – it has already paid EUR 801,614.89 and it has thus a debt of EUR 498,385.11, while the Respondent claims that the Appellant has only paid EUR 679,805 and it must thus pay EUR 620,195. The positions of the parties, which are at the root of this discrepancy, are addressed *infra* in further detail.

III.2 Correspondence between the parties

10. On 23 January 2009, the Respondent sent an invoice to the Appellant indicating the bank account to which the remaining EUR 1,300,000 payment should be made, and specifying that the total amount payable had to be made "net". The invoice *inter alia* reads:

"[…] TOTAL PAYABLE AMOUNT (net) EUR 1.300.000,00

[…] WE HEREBY ASKING YOU TO REMIT TO US THE AMOUNT OF EURO 1.300.000,00 (remaining amount payble after the receive of the advance payment) IN THE FOLLOWING BANK ACCOUNT […] [sic]*".*

11. In response to the Appellant's failure to pay the 2nd installment, due on March 2009, the Respondent sent letters dated 1, 8 and 14 April 2009, reminding the Appellant of its obligation under point 2(b) of the Transfer Agreement to pay said installment. Notwithstanding the letters, the Appellant did not pay the 2nd installment, and subsequently also failed to pay the 3rd installment, due on 20 April 2009.

12. By email dated 24 April 2009, the Appellant's Financial Director, Mr Raul Correa da Silva, informed the Respondent that the Appellant was facing financial difficulties but that, by the

end of the following week, the Appellant would be in the position to give the Respondent the exact dates on which it would be able make the past due payments.

13. On 5 May 2009, the Respondent sent a letter to the Appellant in which the former gave the latter three days as from the date of the letter to make the past due payments. The Respondent threatened to take legal action before FIFA in the event of non-payment of said amount.

14. By email dated 18 May 2009, Mr Correa da Silva informed the Respondent inter alia that: *"[…] everything should be taken care of within the week. Please reassure everyone that we may be running a bit late, however, the Club runs no risk regarding the collection of the payment. The only thing that we need is more time. […]"* (translation from the original).

15. Then, the Appellant failed to pay the 4th installment, due on 20 May 2009.

16. On 21 May 2009, the Respondent sent another email extending the final deadline for past due payments until 22 May 2009. The Respondent warned the Appellant that failure to make the required payments by the set deadline date would result in the filing of an official legal claim before FIFA.

17. On 4 June 2009, not having received the past due payments, the Respondent filed an official claim before the FIFA Players' Status Committee (hereinafter also "FIFA-PSC") requesting the payment of the first three monthly installments, plus interest of 5% *p.a.* as from the date of each respective installment.

18. By email dated 14 July 2009, Mr Correa da Silva again apologized for the delay, reassuring that the Appellant would fulfil its obligation without the need of FIFA intervention, and requesting a little more time to collect the money owed.

19. By email dated 29 July 2009, the Respondent informed the Appellant that the delay in payment had caused a lot of problems to the former, and that it had already filed an official claim with FIFA. At this point, according to the (not yet contested) Respondent's calculations, the amount past due had reached EUR 500,000.

20. By email dated 30 July 2009, Mr Correa da Silva repeated that the Appellant was facing financial troubles and further informed the Respondent that, pursuant to Brazilian law, it needed a signed copy of the Transfer Agreement and of the relevant invoices before making the required payments. In this email, Mr Correa da Silva also promised to pay the amount past due as soon as the Respondent delivered all the requested documents. Per this demand, the Respondent sent the Transfer Agreement and invoice to the Appellant.

21. No references to taxes or other dues related to the payment of the amounts provided in the Transfer Agreement were made in any correspondence up to this point.

22. On 4 August 2009, the Appellant made a payment to the Respondent in the amount of EUR 254,925.

23. By email dated 7 August 2009 to Mr Correa da Silva, the Respondent confirmed that:

"[…] on 04/08/2009 the amount of 254.925 Euros was deposited to the account of Panathinaikos FC by Club Corinthians Paulista. The competent division of FIFA has already been informed about this fact. Consequently the full amount owed up to today is 245.075 Euros, and we therefore ask for its settlement as soon as possible" (translation from the original).

24. In response, on 9 August 2009, on behalf of the Appellant, Mr Corera da Silva indicated by email that:

"The pending amount is 200.000. The difference in the wire was the income tax that is retained in Brazil in every wire. I believe that there is an offsetting of this tax in your country. We can send you the receipt, if the bank hasn't already done it" (translation from the original).

25. The Respondent expressed his discordance with Mr Correa da Silva in an email dated 24 September 2009, in which it declared:

"The retained tax in Brazil is an obligation that lies with Corinthians. And it is clear in the agreement that the agreed price for the transfer is the net amount of 1.500.000 Euros. Consequently, the owed amount today is 190.150 Euros. Awaiting a quick settlement of this amount owed until today" (translation from the original).

26. On 31 August 2009, the Respondent received a second payment from the Appellant, again in the amount of EUR 254,925.

27. On 4 November 2009, the Respondent updated its claim before the FIFA-PSC. The Respondent notified FIFA that the 9th installment of EUR 100,000 net had become due and had not been paid. Consequently, according to the Panathinaikos the outstanding debt at that point reached EUR 290,150, plus the default interest payment of 5% *p.a.* from the date on which each installment was effectively due.

28. On 13 November 2009, the Respondent reminded the Appellant that there had been no payment since August 2009 and that the net amount past due was EUR 290,150.

29. On 4 March 2010, the Appellants made a payment in the amount of EUR 169,955 to the Respondent.

30. From the payments made on 4 and 31 August 2009, and 4 March 2010, the Appellant withheld and collected in favour of the Brazilian Government the amount of EUR 121,614.99 pursuant to Section 685 of the Brazilian Income Tax Regulation (Decree 3,000/00), which provides that all payments made to non-residents in Brazil are subject to the imposition of withholding income tax at a rate of 15 percent.

31. On 22 March 2010, the Respondent again amended its claim before the FIFA-PSC, this time declaring that the amount past due was EUR 620,195.

32. The Respondent has not made any payments since 4 March 2010.

III.3 The proceedings before the FIFA Players' Status Committee

33. On 5 September 2011, the Single Judge of the FIFA-PSC adopted the decision now in appeal before the CAS. The Single Judge first examined his jurisdiction to rule upon the dispute; the jurisdictional part of the decision reads as follows:

"The Single Judge confirmed that, on the basis of art 3. Par. 1 of the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber in connection with art. 23 par. 1 and 3 as well as art. 22 f) of the 2010 edition of the Regulations on the Status and Transfer of Players, he was competent to deal with the present matter since it concerned a dispute between two clubs affiliated to different associations".

34. On the merits, the Single Judge of the FIFA-PSC considered that "net amount" did not include the taxes the Appellant withheld in favour of the Brazilian Federal Government. In reaching this conclusion, the Single Judge reasoned that if it had been the will of the parties to deduct certain sums from the total amount of transfer compensation, such deductions should have been clearly mentioned in the Transfer Agreement. After analyzing all of the clauses in the Transfer Agreement (including point 2), the Single Judge concluded that it did not contain a provision indicating such intent. Further, the Single Judge underlined that the Appellant made a number of payments between the period of 30 July 2009 and 2 March 2010 and, based on the documentation on file, the Appellant had not, up until that date, raised the issue of tax deduction.

35. As a consequence, the Single Judge of the FIFA-PSC accepted on the merits the Respondent's claim and ordered the Appellant to pay the Respondent EUR 620,000 (curiously rounded down from the amount of EUR 620,195 requested by Panathinaikos) plus a default interest of 5 percent *p.a.* as from the date of each respective installment. The FIFA-PSC gave the Appellants 30 days from the date of the notification of its decision to effectuate the payment. Finally, the FIFA-PSC also ordered the Appellant to pay the costs of the proceedings (CHF 18,000) within the same time frame.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 14 May 2012, pursuant to Article R47 of the Code of sports-related arbitration (the "CAS Code") and Article 63 of the FIFA Statutes, the Appellant filed an appeal with the CAS to challenge the decision adopted by the Single Judge of the FIFA-PSC on 5 September 2011.

37. On 24 May 2012, the Appellant filed its Appeal Brief setting forth the grounds for the appeal.

38. On 25 May 2012, the CAS Court Office notified FIFA of the present arbitral proceedings.

39. On 4 June 2012, FIFA communicated to the CAS Court Office its decision to renounce its right to request intervention in the present arbitration proceedings.

40. On 15 June 2012, the Respondent requested the CAS Court Office that the time limit for the filing of the Answer be extended for 10 days until 29 June 2012. On 20 June 2012, the Appellant informed the CAS Court Office that it agreed with the Respondent's request for an extension until 29 June 2012 to file its Answer. As a result, the CAS Court Office confirmed that the deadline be extended to the requested date.

41. On 29 June 2012, in accordance with the extension of the deadline previously granted, the Respondent filed its Answer.

42. On 2 July 2012, the CAS Court Office invited the parties to inform whether they preferred a hearing to be held in the present matter or whether the Panel should issue an award based on the parties' written submissions. On 6 July 2012, the Appellant confirmed that it did not want a hearing to be held. On 9 July 2012, the Respondent also confirmed that it did not consider a hearing necessary in this matter.

43. By letter of 9 July 2012, the CAS Court Office informed the parties that the Panel appointed to decide the dispute would be as follows: Professor Massimo Coccia, Rome, Italy (President); Dr Markus Bösiger, Zürich, Switzerland (appointed by the Appellant); and Dr Hans Nater, Zürich, Switzerland (appointed by the Respondent).

44. On 24 September 2012, the Panel decided, in accordance with Article R56 of the CAS Code to allow a second round of submissions from the parties. The Appellant was granted a deadline of 14 days upon the receipt of this correspondence. The Panel also informed the parties that in accordance with Article R57 it had decided not to hold a hearing in the present matter except if new circumstances warranted one after reviewing the parties' additional submissions. Finally, as per Respondent's request, the Panel attached the first page of the statement of appeal filed by fax by the Appellant on 14 May 2012, together with the FedEx proof of sending on the same date, in order to inform the Appellant about the exact filing time of the appeal.

45. In a letter dated 2 October 2012, the CAS Court Office notified the parties that the Deputy President of the CAS Appeals Arbitration Division had extended the time limit to communicate the operative part of the award to the parties, pursuant to Article R59 of the CAS Code, until 23 November 2012.

46. On 8 October 2012, in compliance with the deadline set by the Panel in the letter dated 24 September 2012, the Appellant filed its additional submission.

47. On 9 October 2012, the CAS Court Office acknowledged receipt of the Appellant's additional submission and, implementing the Panel's instructions, granted the Respondent 14 days to file its reply.

48. On 18 October 2012, the Respondent requested a 10-day extension of the time limit to file its reply until 2 November 2012. On this same date, the requested extension was granted.

49. On 2 November 2012, the Respondent requested an additional extension of time to file its reply of 2 working days until 6 November 2012. On 5 November 2012, the CAS Court Office, on behalf of the Panel, confirmed the requested extension.

50. In compliance with the granted extension, the Respondent filed its answer to the Appellant's additional submission on 6 November 2012.

51. On 14 November 2012, the CAS Court Office sent the parties a copy of the Order of Procedure for the present matter and requested the parties to sign and return a copy of said Order.

52. On 23 November 2012, the CAS notified by fax to the parties the operative part of the award.

V. OVERVIEW OF THE PARTIES' POSITIONS

53. The following is a brief summary of the parties' submissions and do not purport to include every contention put forth by the parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion.

V.1 The Appellant: SC Corinthians Paulista

54. On 14 May 2012, the Appellant filed a statement of appeal before the CAS, in which it challenged the appealed decision, submitting the following prayer for relief:

"The Appellant presents the appeal against the Respondent requesting the partial reform of the Decision that condemned the Appellant to proceed with the payment of the amount of EUR 620,000.00 (six hundred and twenty thousand Euros) in connection with the Transfer Agreement executed between the Parties for the transfer of the player R. […]".

55. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant did not at any moment deny its financial obligation towards the Respondent.
- The amount the Respondent requested in connection to the Player's transfer (EUR 620,000) is incorrect and based on a misunderstanding of the term "net amount".
- The concept of "net" should be interpreted on a case by case basis from a legal standpoint, especially where – as is the situation here – it involves very peculiar tax concepts.
- The term "net" means *"that the payment should be made after the deduction of the amount up to 5% (five percent) due in concept of the Regulations of FIFA, i.e., solidarity contribution […]"*; furthermore, "net" requires a distinction to be made between amounts which are not

recoverable by Respondent (such as solidarity contribution, Brazilian currency exchange tax and remittance banking costs) and those amounts which are recoverable (such as the Brazilian withholding income tax), the latter of which is deductible from the total amount due to the Respondent.

- Based on internal Greek law regarding Greek football *"sociétés anonymes"* (SAs), the amounts collected by means of the withholding income tax in Brazil generate a tax credit in Greece, which can be offset by the Respondent for purposes of calculating its corporate income tax in Greece. If the Panel adopts the interpretation of the term "net" as proposed by Respondent ("without any deduction"), this tax credit would provide the latter with a benefit substantially higher to that agreed upon in the Transfer Agreement. In other words, the Respondent would receive EUR 1,300,000 and, additionally, a Greek tax credit of EUR 229,411. In this respect, the Respondent would be unjustly enriched and the Appellant would suffer economic distress.
- Accordingly, the withholding income tax that it collected in favor of the Brazilian Federal Government should be considered as part of the sum owed to the Respondent (EUR 1,300,000). Thus, the total amount that the Appellant has paid per the Transfer Agreement is EUR 801,614.89 and consequently, the debt pending is of EUR 498,385.11. This remaining amount is also subject to the Brazilian withholding tax and deduction.

V.2 The Respondent: Panathinaikos FC

56. On 29 June 2012, the Respondent submitted an answer containing the following prayers for relief:

> *"1. To declare the Appeal dated 14 May 2012 inadmissible.*
>
> *2. Eventualiter: to dismiss the Appeal dated 14 May 2012 and to confirm the FIFA Player Status Committee decision dated 5 September 2011.*
>
> *3. To order the Appellant to pay the entire costs of the present arbitration;*
>
> *4. To order the Appellant to pay the legal fees and expenses of Panathinaikos FC, to be determined at a later stage of the present arbitration".*

57. The Respondent submits that the term "net amount" is unambiguous and means that the debtor will have to pay the net amount plus the applicable tax or other charges.

58. According to the Respondent, "net amount" means "without any deduction". As support, the Respondent points to CAS 2006/A/1018, which adopted this very same interpretation of "net amount".

59. The Respondent also asserts that the parties' behaviour confirms that they intended "net amount" to mean "without any deduction". In support, the Respondent puts forth the following submissions:

- Both parties knew very well that "net amount" meant the Appellant had to pay EUR 1,300,000 and that this is the amount that had to enter the Respondent's bank account. Indeed, it is common ground that the term "net" is used in sports contracts, such as in player employment contracts, to describe the final amount that the creditor would receive.
- The transfer agreement of the same Player between the Respondent and Flamengo, which occurred only a few months prior to the Transfer Agreement, called for the Respondent to pay a net amount of EUR 3,000,000. In light of this agreement, the Respondent paid EUR 750,000 Euros to the Greek tax authorities and also the net amount of EUR 3,000,000 to Flamengo. This demonstrates that the common understanding of the term "net" is "without any deduction". Furthermore, in assessing this factual circumstance, it is a reasonable conclusion that the Respondent did not wish to pay taxes for the same player twice in six months based on the same contractual wording.
- Upon receiving the payment of EUR 254,925, the Respondent did not deduct EUR 300,000 from the amount owed, thereby confirming that the Respondent understood the term "net amount" as excluding a deduction of withholding taxes.
- The Appellant did not raise the issue of taxes until eight months after the signing of the Transfer Agreement and after numerous reassurances that it would pay the complete transfer fee.
- Greece and Brazil have not signed a treaty for the avoidance of double taxation; therefore, the Respondent alleges that it cannot offset Brazilian income tax towards Greek taxes.
- Even the Appellant's own national federation, the CBF, defines "net amount" as the amount after payment of local taxes.

60. The Respondent urges the Panel not to accept an interpretation of "net amount" under which certain costs of the transaction, including Brazilian currency exchange taxes and remittance banking costs, would be borne by the Appellant, while other costs, such as the Brazilian withholding income tax would be excluded therefrom without any factual or legal circumstances to support this distinction. The Respondent stresses that the Appellant has failed to invoke any reason, legal or factual, for distinguishing between the various Brazilian taxes, or between recoverable and non-recoverable amounts.

61. The Respondent contends that the Appellant has put forth two distinct and contradictory interpretations of the term "net". On the one hand, the Appellant defines "net" as "net from solidarity contribution" while, on the other hand, it defines it as "net from non-recoverable amounts such as solidarity contribution, currency tax and banking costs". As support, the Respondent indicates that, in the Appeal Brief, the Appellant informed the Panel that it had paid the currency tax and the banking costs on the basis of mere generosity, and that the concept of net contractually provided *"can only be applied to subjects related to the [FIFA] Regulations"*. In the subsequent submission, however, the Appellant attempts to convince the Panel that it paid the currency tax and the banking costs, not on a voluntary basis, but rather as a result of the interpretation of "net" as "net from non-recoverable amounts".

62. The Respondent concludes by asking the Panel to rule that, based on the proper interpretation of "net" ("without any deduction"), the amount paid by the Appellant to this date is only EUR

679,805, which means that the debt pending is EUR 620,195; accordingly, the Respondent requests the Panel to confirm the appealed decision.

VI. ADMISSIBILITY, JURISDICTION AND APPLICABLE LAW

VI.1 Admissibility of the Appeal

63. In its reply, the Respondent disputed the timeliness of the Appellant's appeal. Pursuant to the FIFA Statutes, a party wishing to appeal a FIFA Decision must do so within 21 days of receiving the notification of the relevant decision. The pertinent part of Article 63 of the FIFA Statutes states: *"Appeals against final decisions passed by FIFA's legal bodies […] shall be lodged with the CAS within 21 days of notification of the decision in question"*. In this case, the FIFA-PSC decision was notified to the parties on 23 April 2012. Therefore, the Appellant had until 14 May 2012 to file its appeal.

64. The Respondent raised concerns about the timeliness of the Appellant's appeal because the file forwarded to it contained no indication of when the Statement of Appeal was sent. Moreover, according to the Respondent, on 15 May 2012, while the parties were amidst settlement negotiations, the Appellant allegedly informed the Respondent that *"[…] In view of this we have filed, a few minutes ago, the relevant Statement of Appeal before the Court of Arbitration for Sports – CAS in connection with the case […]"*. The Respondent indicated that in the event such declaration was true and the Statement of Appeal was sent on 15 May 2012, the appeal would be time barred and inadmissible.

65. In response to the Respondent's request for information, the CAS Court Office sent to the parties on 24 September 2012 the first page of the Statement of Appeal filed by fax by the Appellant on 14 May 2012, together with the FedEx proof of sending on the same date.

66. It is clear from the evidence on file, therefore, that the Statement of Appeal was sent on 14 May 2012 in accordance with the 21 day appeal time limit of the FIFA Statutes. As a result, the appeal is not time barred and must be declared admissible. Furthermore, the appeal complies with all the requirements set forth by Article R48 of the CAS Code.

VI.2 Jurisdiction

67. The jurisdiction of the CAS in the matter at hand, which is not contested by the parties, derives from Article R47 of the CAS Code, and Articles 62 and 63 of the FIFA Statutes. Accordingly, the CAS has proper jurisdiction.

VI.3 Applicable Law

68. Article R58 of the CAS Code provides as follows:

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

69. Article 62(2) of the FIFA Statutes reads: *"the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

70. With regard to the applicable regulations, the Transfer Agreement states that *"the settlement of any dispute between the parties to this Agreement shall be the Law and Rules of FIFA".* Accordingly, the Panel will decide the dispute pursuant to the various regulations of FIFA and, additionally, Swiss Law.

VII. DISCUSSION

71. The Panel is called upon to decide whether the Appellant is entitled to deduct the Brazilian withholding income tax from the amount due to the Respondent, where the parties have agreed to pay said amount "net".

72. After having carefully reviewed both parties' contentions, the Panel considers that the proper interpretation of "net amount" is "without any deduction", in the sense that the agreed net amount must exactly correspond to the amount which is received in the creditor's bank account or is anyway collected by the creditor. As correctly pointed out by the Respondent, the CAS adopted this interpretation in the award of 10 November 2006, CAS 2006/A/1018.

73. At the heart of that dispute was a contractual provision (article 3) of a transfer agreement between River Plate and Hamburger SV, which stipulated that the parties agreed to a transfer fee for the player of 3.5 million USD without any deduction (*"ohne jeglichen Abzug"*). According to that CAS panel, the term "without any deduction" meant a "net amount", and the purpose of including said term in Article 3 was to ensure that the exact amount of 3.5 million USD would reach the bank account of the club transferring the player. That Panel went on to address the scope of "without any deduction", which it explained extended to all possible deductions including taxes, bank costs and solidarity contribution. It made no exclusion for certain taxes or duties.

74. The relevant part of that CAS award reads:

"[…] The Panel adds that the scope of this clause cannot be limited to tax and bank costs as the German word "jeglichen" literally covers all possible deductions. According to the principle of "pacta sunt servanda", the Panel thus considers that the interpretation of article 3 of the transfer agreement leads to the conclusion that the parties

agreed on a net amount of 3.5 million USD to be paid to the Appellant. The Respondent had thus to bear all the costs, including those deriving from the solidarity mechanism […]" (CAS 2006/A/1018, para. 28).

75. The Panel finds this precedent particularly persuasive, and notes that if "without any deduction" is construed as being equivalent to "net" (as stated in the just quoted CAS award), the opposite must also be true and "net" is to be construed as meaning "without any deduction". It must be added that it is a common understanding in the practice of sports contracts – particularly in employment contracts between clubs and footballers – that "net amount" refers to the final amount the creditor expects to receive in its bank account. Under this approach, all sorts of taxes, expenses and charges due to the tax authorities or to other third parties (for example the banks involved in the payment) in connection with the payment, whether recoverable or not by the creditor, are to be paid by the debtor on top of the agreed net amount.

76. In this respect, it does not matter whether the creditor is entitled to a tax credit based on a double taxation treaty or national law or not. For the sake of completeness, the Panel points out that even assuming that a double taxation treaty or national Greek law should be taken into account to assess the applicable deductions, there is no relevant evidence that supports the Appellant's contention that the Respondent in the present case would be entitled to a tax credit.

77. According to the Appellant, based on the reciprocity principles accepted worldwide, the amounts collected by means of withholding income tax in Brazil should generate a tax credit in Greece. However, as the Respondent duly alludes, there exists no double taxation treaty between Greece and Brazil. Therefore, the Respondent cannot resort to an international treaty to offset the Brazilian withholding tax for the purposes of calculating its Greek corporate income tax.

78. Second, the Appellant argues that the Respondent is also entitled to a tax credit based on internal Greek tax law. The Appellant asserts that a Greek football SA is entitled to offset any income tax withheld by a non-Greek football club in relation to player transfer fees payments. However, the Appellant fails to produce any relevant evidence in this regard; hence, it has not fulfilled its burden of proof. Indeed, it is well established CAS jurisprudence that a party pleading a fact must convince the Panel that said fact is true, accurate and produces the consequence envisaged by that party (cf. e.g. award of 11 June 2008, CAS 2007/A/1380, para. 98).

79. The Panel also deems it unnecessary to decide whether the term "net" should be analyzed on a case by case basis as alleged by the Appellant. This is because, even assuming that the term "net" should be analyzed under this approach, the Appellant has failed to support its interpretation of the term with any relevant facts or authorities.

80. Indeed, while the Appellant argues that the concept of "net" should take into account whether an amount is recoverable or non-recoverable by the Respondent, it offers no evidence to support that, at the time the Transfer Agreement was signed, the parties understood this to be the proper interpretation of "net". On the other hand, the Respondent presents a series of facts, which have remained to a large extent unrebutted by the Appellant, tending to show that the parties understood "net" to mean "without any deduction" (see *supra*, para. 59).

81. Finally, the Panel notes that nothing in the Transfer Agreement suggests that the term "net" means "net from non-recoverable amounts such as solidarity contribution, currency tax and banking costs". As the Single Judge of the FIFA-PSC correctly reasoned, had it been the will of the parties to deduct from the total amount of the transfer compensation certain sums, such deductions should have been clearly mentioned in the relevant agreement.

82. In conclusion, the Panel finds that the term "net amount" means that any deduction to be applied by the Appellant when paying the Respondent must be done on top of the sums provided by the Transfer Agreement; this means that the Appellant, at the time of payment, has the onus to exactly calculate what gross amount it must pay in order to render any deduction irrelevant to the Respondent. The amount the Respondent is entitled to receive in its bank is therefore EUR 1,300,000 irrespective of the taxes or duties, whether recoverable or non-recoverable, that the Appellant is required to collect for the Brazilian tax authorities or on other counts. As a result, the Panel deems that the Appellant has only paid to the Respondent EUR 679,805; the pending Respondent's credit is thus EUR 620,195. This outstanding amount is not subject to any deduction, including for withholding income tax (in the sense that any mandatory deduction will have to be done on a gross amount which will eventually yield the owed net amount in favour of the Respondent). Accordingly, the Panel confirms the decision dated 5 September 2011 of the Single Judge of the FIFA-PSC.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by SC Corinthians Paulista against the decision adopted on 5 September 2011 by the Single Judge of the FIFA Players' Status Committee is dismissed.

2. The decision adopted on 5 September 2011 by the FIFA Players' Status Committee is confirmed.

(…)

5. All other requests or motions submitted by the parties are dismissed.