CAS 2020/A/7076 World Anti-Doping Agency (WADA) v. National Anti-Doping Agency of India & Sumit Sangwan

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom

in the arbitration between

World Anti-Doping Agency (WADA), Canada

Represented by Mr Ross Wenzel, WADA General Counsel, and Messrs Nicolas Zbinden and Adam Taylor, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland

- Appellant -

and

National Anti-Doping Agency of India, India

Represented by Ms Manpreet Kaur Bhasin, Attorney-at-Law, New Delhi, India

- First Respondent –

and

Sumit Sangwan, India

Represented by Messrs Saurabh Mishra and Shivam Singh, Attorneys-at-Law, New Delhi, India and Rustam Sethna, Attorney-at-Law in London, United Kingdom

- Second Respondent -

I. THE PARTIES

1. The World Anti-Doping Agency (the "Appellant" or "WADA") is a private law foundation established under Swiss law in 1999 to promote and coordinate at international level the fight against doping in sport on the basis of the World Anti-Doping Code (the "WADA Code"). WADA has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The National Anti-Doping Agency of India (the "First Respondent" or "NADA") is the National Anti-Doping Organisation of the Republic of India, which promotes and coordinates the fight against doping at national level. It is reconised as such by WADA in accordance with the 2015 WADA Code. It operates under the 2015 Anti-Doping Rules of NADA ("NADA ADR").

3. Mr Sumit Sangwan (the "Second Respondent" or "Athlete") is a boxer of Indian nationality.

4. NADA and the Athlete are jointly referred to as the "Respondents".

5. WADA and the Respondents are jointly referred to as the "Parties".

II. THE DECISION AND ISSUE ON APPEAL

6. WADA appeals a decision rendered by the Anti-Doping Appeal Panel ("ADAP") on 3 March 2020 ("the Appealed Decision") under the 2015 NADA ADR. The ADDP imposed a reprimand on the Athlete following an adverse analytical finding ("AAF") for Acetazolamide ("ACZ") belonging to the category S5 of WADA's Prohibited List in effect in 2019 (the "Prohibited List"), which is incorporated in the NADA ADR. WADA is challenging the Appealed Decision in the present proceedings.

III. FACTUAL BACKGROUND

A. Background facts

7. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and the CAS file. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning.

8. On 10 October 2019, the Athlete was selected for an in-competition urine doping control test by NADA at the Elite Men Boxing Championship 2019 held in Himanchal Pradesh, India. Therefore, he was requested to provide a urine sample for drug testing purposes, which was assigned with the reference number A6366879. On his Doping Control Form ("DCF"), the Athlete provided the following information regarding the medication taken: "*T-Mobizox, Diclofinac, Forties Hospital OPD slip attached*".

9. The WADA-accredited Anti-Doping Lab Qatar in Doha, Qatar completed its analysis of the Athlete's A-Sample and reported a certificate of analysis to the NADA, which indicated the detection of ACZ (or the "Prohibited Substance"). ACZ is listed in the 2019 Prohibited List under category S5 ("Diuretics and Masking Agents"). It is a non-threshold specified substance prohibited at all times.

10. On 29 November 2019, the Athlete was notified by NADA of the AAF and the potential Anti-Doping Rule Violation ("ADRV") under Article 2.1 of the NADA ADR. An optional provisional suspension was not imposed on the Athlete.

11. On 10 December 2019, the Athlete informed NADA that he waived his right to have his B-Sample analysed.

B. Proceedings before the NADA Anti-Doping Disciplinary Panel

12. On 26 December 2019, the NADA Anti-Doping Disciplinary Panel ("ADDP") rendered its decision.

13. The decision of the ADDP states, in its relevant parts, as follows:

> "*..., it is established that a violation under Article 2.1 of* [the NADA ADR] *has taken place. The explanation offered by the Athlete shows his negligence which is no ground to exonerate him for his act of consumption the specific prohibited substance.*
>
> *Once a violation of anti-doping rules has been established, sanctions of individuals as provided under Article 10 of the* [NADA ADR] *must ensue. The Hearing Panel holds that since the Athlete in the present case was negligent in consuming the specified prohibited substance without verifying its composition and elements without disclosing the same in Doping Form, he is liable for sanctions under Article 10.5.1 for ineligibility for a period of 1 year.*
>
> *In the present case, since the Athlete was not provisionally suspended as evident from the minutes of the Provisional Suspension Hearing of the Athlete/ Mr. Sumit Sangwan dated 10/10/2019 wherein the Athlete did not accept the optional provisional suspension from participating in the events, the period of his ineligibility for the period of 1 year shall commence from the date of the present order i.e. 26.12.2019.*"

C. Proceedings before the Anti-Doping Appeal Panel

14. On 16 January 2020, the Athlete filed an appeal against the decision of the ADDP before the ADAP.

15. On 3 March 2020, the ADAP rendered the Appealed Decision.

16. The operative part of the Appealed Decision reads as follows:

> "*18. In the present situation, the case falls under the light degree of fault since the athlete has consulted SAI Doctor and only 34 ng/ml concentration level of the*

> *prohibited substance has found in the urine sample of the athlete. In view of the above, we are of the considered view that* [ADDP] *did not consider the above factors and degree of fault, and did not apply the correct principles applicable to the length of the period of ineligibility with regard to sanction to be imposed in case of No Significant Fault or Negligence. We thus set aside the order of the* [ADDP] *on the aspect of sanction and impose the sanction of 'Reprimand' with no period of ineligibility on the athlete.*
>
> *19. The appeal thus stands disposed of.*"

17. On 1 April 2020, NADA submitted an initial portion of the case file to WADA.

18. On 20 April 2020, NADA provided WADA with additional documents.

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 11 May 2020, the Appellant filed its Statement of Appeal against the Respondents with respect to the Appealed Decision pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"), 2019 edition. In its Statement of Appeal, WADA requested to submit the appeal to a sole arbitrator.

20. On 14 May 2020, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal and, *inter alia*, invited the Respondents to comment on the language of the present arbitration and the number of arbitrators.

21. On 18 May 2020, the Appellant requested a two-week extension of the time limit to file its Appeal Brief in the present matter.

22. On the same date, the CAS Court Office granted the Appellant's time limit extension request in accordance with Article R32 para. 2 of the CAS Code in conjunction with the CAS Emergency Guidelines of 16 March 2020.

23. On 29 May 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

24. On 3 June 2020, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and invited the Respondents to file their respective Answers within twenty days from the receipt of the letter by courier in accordance with Article R55 of the CAS Code.

25. On 15 June 2020, the CAS Court Office, upon receipt of the Second Respondent's contact details, resent the entire case file to him and informed the Parties that the deadlines set to the Second Respondent would start running "*upon receipt by the Second Respondent of the present letter by courier*". The CAS Court Office further informed the Parties that the First Respondent failed to file its position on the language of the arbitration and the number of arbitrators within the time limit granted.

26. On 1 July 2020, the Second Respondent requested for a 10-day extension of the time limit to file his Answer in the present matter.

27. On 2 July 2020, the CAS Court Office granted the Second Respondent's time limit extension request in accordance with Article R32 para. 2 of the CAS Code.

28. On 29 June 2020, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.

29. On 20 July 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a sole arbitrator.

30. On 26 July 2020, the Second Respondent filed a request for the production of the Laboratory Documentation Package ("LDP") in respect of his A-Sample. The Second Respondent also requested the suspension of the time limit to file his Answer in the present matter until (i) he receives the complete LDP and (ii) the Appellant and First Respondent had paid the entire advance of costs in this matter.

31. On 27 July 2020, the CAS Court Office invited the Appellant to comment on the Appellant's request for the production of the LDP by 30 July 2020. In addition, the CAS Court Office suspended the Second Respondent's time limit to file his Answer and invited the Appellant and First Respondent to comment on the Second Respondent's time limit suspension request by 30 July 2020.

32. On 30 July 2020, the Appellant and First Respondent submitted their respective comments on the Second Respondent's documents production request and suspension request.

33. On the same date, the CAS Court Office acknowledged receipt of the Appellant's and First Respondent's submissions on the Second Respondent's requests and informed the Parties that the issue of the Second Respondent's suspension request would be referred to the President of the CAS Appeals Arbitration Division, or her Deputy, for a decision in accordance with Article R32 of the CAS Code.

34. On 4 August 2020, in consideration of the submissions filed by the Appellant and the First Respondent, the Second Respondent made further submissions on his request for the production of the LDP and amended its request as follows:

> "*Per the Technical Document on LDPs, Athletes are required to request for an LDP through the relevant Testing Authority or Results Management Authority. In this case, this is the First Respondent.*
>
> *a. The First Respondent be ordered to produce the Document for the Athlete's benefit;*
>
> *b. the first Respondent be ordered to provide the Athlete with the LDP, upon the payment of US$ 400 by the Athlete, in accordance with the Notice of Charge; and*
>
> *c. The proceedings remain suspended until (a) and (b) above have been completed and the remaining parties pay the entire share of the Advance of Costs*."

35. On 5 August 2020, the CAS Court Office informed that Parties that unless the First Respondent would produce the documents requested by the Second Respondent, this issue would be referred to the sole arbitrator, once constituted, for a decision in accordance with Article R44.3 of the CAS Code. In addition, the Appellant and First Respondent were invited to comment on the Second Respondent's suspension request by 10 August 2020. Finally, the Parties were informed that the time limit of the Second Respondent to submit his Answer would remain suspended until further notice from the CAS Court Office.

36. On 7 August 2020, the Appellant commented on the Second Respondent's request for the production of documents.

37. On the same date, the First Respondent requested the CAS Court Office to provide it with the Second Respondent's complete submissions of 4 August 2020.

38. On 11 August 2020, the CAS Court Office acknowledged receipt of the Appellant's and First Respondent's submissions, provided the First Respondent with the Second Respondent's complete submissions of 4 August 2020 and granted the First Respondent a new time limit to comment on the Second Respondent's suspension request until 14 August 2020.

39. On 14 August 2020, the First Respondent filed its comments on, *inter alia*, the Second Respondent's documents production request and suspension request.

40. On 27 August 2020, the CAS Court Office acknowledged receipt of the First Respondent's submissions of 14 August 2020. The CAS Court Office further informed the Parties that the Second Respondent's suspension request would be referred to the President of the CAS Appeals Arbitration Division, or her Deputy, for a decision and that, in the meantime, the Second Respondent's time limit to file his Answer would remain suspended until further notice.

41. On 7 September 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to appoint Mr Jeffrey G. Benz, Attorney-at-Law in Los Angelos, California, USA and Barrister in London, United Kingdom as the Sole Arbitrator in the present procedure.

42. On 15 October 2020, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided that the Second Respondent's time limit to file his Answer would resume "*as from today*" and that the Second Respondent's request for the production of documents would be referred to the Sole Arbitrator for a decision pursuant to Article R44.3 of the CAS Code.

43. On 21 October 2020, the Second Respondent filed his Answer in accordance with Article R55 of the CAS Code (within the granted extension).

44. On 22 October 2020, the CAS Court Office acknowledged receipt of the Second Respondent's Answer, communicated both the First and Second Respondent's Answer to the other Parties. The CAS Court Office further informed that Parties that they shall not be authorised to "*supplement or amend their requests or their argument nor to produce new exhibits, nor to specify further evidence on which they intent to rely, after the submission of the appeal brief and of the answer*" unless the Parties agreed or the Sole Arbitrator ordered otherwise on the basis of exceptional circumstances in accordance with Article R56 para. 1 of the CAS Code. Finally, the Parties were invited to inform the CAS Court Office, by 29 October 2020, whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to render an Arbitral Award based solely on the Parties' written submissions.

45. On 29 October 2020, the Second Respondent informed the CAS Court Office about his preference for a hearing to be held in this matter.

46. On 6 November 2020, the Appellant informed the CAS Court Office about its intension

to file a Reply to the Respondents' Answers and requested to be granted a three-week time limit to file its Reply.

47. On 9 November 2020, the CAS Court Office invited the Respondents to comment on the Appellant's request for a second round of written submissions by 12 November 2020.

48. On 12 November 2020, the Second Respondent objected to a second round of written submissions and further stated that new evidence in response to the Second Respondent's expert witness would not constitute exceptional circumstances under Article R56 para. 1 of the CAS Code. The Second Respondent further enclosed a study by Dr Hampson published in August 2016.

49. On 4 January 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant WADA a deadline until 11 January 2021 to file a Reply "*strictly limited to the findings in Dr Hampson's expert testimony and shall not refer to any other ancillary or related arguments raised by the Athlete in the Answer*."

50. On 8 January 2021, the Appellant waived its right to file a Reply in this matter after it had further considered a study published by Dr Hampson in 2020. The Appellant further stated, *inter alia*, that it had decided to not challenge "*that the Athlete in this case has proven the origin of the prohibited substance…WADA will therefore restrict its arguments at the hearing to the Athlete's fault, as already set out in its Appeal Brief*." Finally, the Appellant expressed its preference for a hearing to be held in this matter.

51. On 12 January 2021, the Second Respondent expressed his interest for exploring a settlement among the Parties.

52. On 13 January 2021, the CAS Court Office invited the Appellant and First Respondent to comment on the Second Respondent's settlement proposal by 18 January 2021.

53. On 18 January 2021, the Appellant informed the CAS Court Office that it had contacted the Second Respondent "*to explore with them whether there is genuine potential for a settlement*."

54. On 29 January 2021, the Appellant requested for a 14-day suspension of the present procedure in the light of the settlement discussions between the Appellant and the Second Respondent.

55. On 1 February 2021, the Second Respondent expressed his agreement to the Appellant's suspension request for a period of 14 days.

56. On 2 February 2021, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, that the Appellant's suspension request was granted unless the First Respondent objected to such request by 3 February 2021.

57. On 23 February 2021, the Appellant informed the CAS Court Office about the continued settlement discussions with both Respondents and requested a further 14-day suspension of the present matter.

58. On the same date, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, that the Appellant's suspension request was granted unless the Respondents objected to it by 25 February 2021.

59. Still on the same date, the Second Respondent agreed to a further 14-day suspension of the present matter.

60. On 11 March 2021, the Appellant informed the CAS Court Office about the reached settlement between the Appellant and Second Respondent. The Appellant further informed the CAS Court Office that the First Respondent did not consent to the settlement agreement between the Appellant and Second Respondent. The Appellant's letter reads, in its relevant parts, as follows:

> "*The Appellant, WADA, and the Second Respondent, the Athlete Mr Sangwan, have reached an agreement on the Consequences to be imposed upon the Athlete for his Anti-Doping Rule Violation. The agreement is intended to be a compromise in the spirit of resolution of the dispute, rather than the former position that either WADA or the Athlete would have adopted at a fully contested hearing. The agreement is as follows:*
>
> > *1. The Athlete is subject to a period of Ineligibility of 16 months, pursuant to Article 10.5.1.1 of the NADA 2015 ADR.*
> >
> > *2. The Period of Ineligibility shall be back-dated to commence on 26 December 2019, pursuant to Article 10.11 of the NADA 2015 ADR. To that end, WADA and the Athlete note that the Athlete's sample collection occurred a considerable period of time ago on 10 October 2019, and subsidiarily that the Athlete has never sought to challenge the commission of the ADRV itself.*
> >
> > *3. The Athlete's results in the competition in connection with which the ADRV occurred, namely the Elite Men Boxing Championship 2019 in Himanchal Pradesh, India, be disqualified, along with all resulting consequences including forfeiture of any titles, awards, medals, points and prize money and/or appearance money.*
> >
> > *4. The Athlete be allowed to return to training during the last two months of his period of Ineligibility, viz. after 22 February 2021, pursuant to Article 10.12.2 of the NADA 2015 ADR. It is noted that the Athlete would therefore already be permitted to resume training of the CAS were to render an Award that implemented this agreement.*
>
> *Unfortunately, it has not been possible to reach any agreement with the First Respondent, the Indian National Anti-Doping Agency. The proposal has been put to NADA, but NADA has rejected it without giving any reasons for doing so* […]
>
> *Due to NADA's lack of agreement, WADA and the Athlete are unable to request that their agreed position be ratified in a Consent Award* […]
>
> *In the circumstances, WADA and the Athlete ask the CAS to decide this matter on the papers, in light of the agreement reached between WADA and the Athlete, and to render an award on the merits (or even just the operative part of that award) as soon as possible, given that as per it is suggested that the issue of costs be reserved to a separate award and that the CAS receives separate further submissions on that issue.*"

61. On the same date, the Second Respondent confirmed that he agreed to the content of the Appellant's letter of 11 March 2021.

62. On 16 March 2021, the CAS Court Office invited the First Respondent to comment, by 22 March 2021, on the Appellant's and Second Respondent's correspondence of 11 March 2021.

63. On 23 March 2021, the First Respondent expressed its opinion that the Sole Arbitrator may decide this matter based on the Parties' written submissions.

64. On 27 May 2021, the CAS Court Office informed the Parties that the Sole Arbitrator considered himself sufficiently well-informed to decide the case based solely on the Parties' written submissions without the need for a hearing.

65. On 27 May 2021, 31 May 2021 and 2 June 2021, respectively, the Appellant, Second Respondent and First Respondent returned the signed copy of the Order of Procedure ("OoP").

V. SUBMISSIONS OF THE PARTIES

66. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

67. In its Statement of Appeal dated 11 May 2020, confirmed in the Appeal Brief dated 29 May 2020, the Appellant sought the following relief:

> "*1. The Appeal of WADA is admissible.*
>
> *2. The decision dated 3 March 2020 rendered by the Anti-Doping Appeal Panel in the matter of Sumit Sangwan is set aside*
>
> *3. Sumit Sangwan is found to have committed an anti-Doping rule violation.*
>
> *4. Sumit Sangwan is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility effectively served by Sumit Sangwan before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
>
> *5. The results achieved by Sumit Sangwan at the Elite Men Boxing Championship 2019 in Himanchal Pradesh, India are disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.*
>
> *6. The arbitration costs shall be borne by NADA or, in the alternative, by the Respondents jointly and severally.*"

68. On 11 March 2021, the Appellant filed the following requests:

> "*1. The Athlete is subject to a period of Ineligibility of 16 months, pursuant to Article 10.5.1.1 of the NADA 2015 ADR.*
>
> *2. The Period of Ineligibility shall be back-dated to commence on 26 December 2019, pursuant to Article 10.11 of the NADA 2015 ADR. To that end, WADA and the Athlete note that the Athlete's sample collection occurred a considerable period of time ago on 10 October 2019, and subsidiarily that the Athlete has never sought to challenge the commission of the ADRV itself.*
>
> *3. The Athlete's results in the competition in connection with which the ADRV occurred, namely the Elite Men Boxing Championship 2019 in Himanchal Pradesh, India, be disqualified, along with all resulting consequences including forfeiture of any titles, awards, medals, points and prize money and/or appearance money.*
>
> *4. The Athlete be allowed to return to training during the last two months of his period of Ineligibility, viz. after 22 February 2021, pursuant to Article 10.12.2 of the NADA 2015 ADR. It is noted that the Athlete would therefore already be permitted to resume training of the CAS were to render an Award that implemented this agreement.*
>
> […]
>
> *In the circumstances, WADA and the Athlete ask the CAS to decide this matter on the papers, in light of the agreement reached between WADA and the Athlete, and to render an award on the merits* […]."

69. The Appellant further suggested to render a separate award on costs.

70. The Appellant's submissions in support of its appeal against the Appealed Decision of the ADAP, in essence, may be summarised as follows:

71. The Appellant submits that the Athlete has committed an ADRV under Article 2.1 of the NADA ADR.

72. The Appellant accepts that the Athlete (i) did not act intentionally and (ii) has established the origin of the prohibited substance.

73. Based on the categories developed by the CAS panel in *CAS 2013/A/3327 & 2013/A/3335* (*Cilic*), amended by the CAS panel in *CAS 2016/A/4371*, the Athlete bears a considerable degree of fault. He did not read the label or cross-checked the ingredients on the label with the applicable list of prohibited substances. He also did not make any internet search of the product before consuming it.

74. As regards the subjective elements of the "Cilic test", the Appellant submits that the Athlete is an experienced athlete. He was well familiar with his anti-doping obligations and doping control proceedings. The Athlete did not face any language barriers or environmental or any other problems that would impact his degree of fault.

75. In the light of the above, the Appellant submits that the Athlete committed an ADRV under Article 2.1 of the NADA ADR and shall be sanctioned with a 16-month period of ineligibility.

B. The First Respondent's Position

76. In its Answer dated 29 June 2020, the First Respondent submitted the following prayers for relief:

> "*It is submitted that the contents of paragraphs 1-5 are not opposed by NADA on the ground that an Anti Doping Violation has been committed by the Athlete that he being a senior and experienced international player, is aware of his responsibilities and despite that he has failed to take utmost care and caution prior to consuming any medications whatsoever. It is submitted that NADA is completely supporting that stand of WADA with regard to the contents of paragraphs 1-5.*
>
> *That the contents of para 6-7 pertain to the cost of the Arbitral proceedings. It is respectfully reiterated that NADA has been established with a primary objective to implement Anti Doping Rules and its ill effects. It is further submitted that the Anti Doping Rules have been adopted and implemented by NADA, strictly in accordance with its responsibilities under the WADA Code and in furtherance of NADA's continuing efforts to eradicate doping in sports in India. Moreover NADA has adopted and implemented the Anti Doping Rules in accordance with the essence and spirit of these Rules. Apart from this, in the present case, NADA has been consistently maintaining its stand before both the hearing Panels that the Athlete has committed an Anti Doping Rule Violation and in view of this he deserves a sanction of ineligibility period of two years.*
>
> *In view of the aforesaid submissions, a humble request is being made to the Hon'ble Court on behalf of NADA, to not impose any costs of proceedings on NADA, either jointly or severally, on the ground that NADA has always strictly implemented the Anti Doping Rules in accordance with its responsibilities under the WADA Code and in furtherance of NADA's continuing efforts to eradicate doping in India. Moreover the Athlete being a senior and experienced international player has failed to take utmost care and caution while consuming medications and this aspect has been consistently opposed by NADA during the panel hearings. That since adoption of WADA Code, the conduct of NADA has been such so as to strictly protect the essence and spirit of the anti doping rules as stipulated in the WADA Code.*"

77. The First Respondent's submissions, in essence, may be summarised as follows:

78. As regards the Athlete's intention, the First Respondent submits that "*the Athlete is required to establish that the Anti Doping Rule Violation was not intentional* […] *NADA has been consistent in its stand that in the present case, the Athlete has failed to discharge the burden of proof under Article 10.1 and therefore does not deserve any benefit of reduction or elimination of the period of ineligibility as sought by him.*" The First Respondent is of the view that the Athlete committed the ADRV intentionally.

79. The First Respondent further submits that the origin of the prohibited substance has not been established by the Athlete. He failed to provide valid explanations regarding his alleged treatment of an eye infection or renal dysfunction, and he failed to submit any medical records or scientific research in support of his medical treatment.

80. In support of the Appellant's initial submissions, the First Respondent submits that the Athlete failed to establish the factual circumstances in which the administration of the

prohibited substance occurred. Based on the case file, the Athlete "*has continued consuming the Cap IOPAR – SR beyond the prescription date or he had consumed some other substance containing Acetazolamide thereby suggesting that the Athlete has not established the factual circumstances in which the administration of prohibited substance.*"

81. In the light of the above, the First Respondent supports the initial request filed by the Appellant and deems a two-year ineligibility sanction against the Athlete to be appropriate. Accordingly, and in consideration of the decision of the CAS panel in *Cilic*, the Athlete cannot benefit from a reduction of his ineligibility period on the basis of No Significant Fault or Negligence under Article 10.5 of the NADA ADR.

C. The Second Respondent's Position

82. In his Answer dated 21 October 2020, the Second Respondent submitted the following prayers for relief:

> "*The Athlete respectfully requests the Hon'ble Sole Arbitrator to rule that:*
>
> *a. The Athlete's Answer is declared admissible.*
>
> *b. The First Respondent's Answer is declared inadmissible, and that the merits of the dispute be decided based on the submissions and evidence submitted by the Appellant and the Athlete only.*
>
> *c. The Athlete benefits from an elimination of the period of ineligibility under Article 10.4 of the NADA Rules.*
>
> *d. Alternatively, the Athlete is sanctioned with a 'reprimand' under Article 10.5.1.1. of the NADA Rules.*
>
> *e. In the alternative, the Athlete is sanctioned with a period of ineligibility which is consistent with a 'light degree' of fault (i.e. 0-8 months with 4 being the standard), (or any other reduced period of ineligibility that the Hon'ble Sole Arbitrator deems fit).*
>
> *f. In the event that a period of ineligibility is imposed on the Athlete, such period of ineligibility be commenced with effect from 10 October 2019, 29 November 2019 or alternatively, 26 December 2019 (in accordance with submissions in Section J above).*
>
> *g. The costs of the arbitration be borne by the Appellant and/or the First Respondent.*"
>
> *h. Each Party bears their own legal costs.*"

83. It is recalled that the Second Respondent confirmed his agreement to the content of the Appellant's letter of 11 March 2021 (cf. paras. 60 and 68).

84. The Second Respondent's submissions, in essence, may be summarised as follows:

85. As an initial matter, the Second Respondent submits that the First Respondent's Answer is inadmissible, because it requested for an increase of the period of ineligibility imposed on the Second Respondent. This means that the First Respondent has in fact launched an appeal against the Appealed Decision. However, the First Respondent has neither at national level nor in these proceedings sought to appeal the decision of the previous instance and it is "*now estopped from seeking an enhanced punishment for the Second Respondent (Athlete) before CAS*".

86. In addition, the First Respondent had the opportunity to file a cross appeal or subsequent appeal with its Answer pursuant to Article 13.2.4 of the NADA ADR. However, the First Respondent failed to do so and is therefore prevented from seeking an increase of the Athlete's period of ineligibility.

87. As regards the ADRV, the Second Respondent accepts that he has committed an ADRV under Article 2.1 of the NADA ADR.

88. The Second Respondent also submits that the prohibited substance, i.e. ACZ, is a specified substance and that the Appellant has accepted that the Athlete did not commit the ADRV intentionally and, consequently, requested the imposition of a two-year period of ineligibility.

89. The Second Respondent is of the opinion that his period of ineligibility should be reduced on the grounds of No Fault or Negligence (Article 10.4 of the NADA ADR) or No Significant Fault or Negligence (Article 10.5 of the NADA ADR).

90. The Athlete used the prohibited substance only for the prescribed period to treat his "*genuine ophthalmic condition*". This is confirmed by the concentration of ACZ in the Athlete's Sample, which is consistent with the cessation of dosage 13 days prior, and the specific gravity in the Sample that is within the normal range. The Athlete has therefore established the origin of how ACZ entered his system.

91. As regards the appropriate reduction of his period of ineligibility and in consideration to his agreement to WADA's letter of 11 March 2021, the Second Respondent submits that a 16-month period of ineligibility is appropriate, taking into account that the Athlete (i) had consulted three doctors, including an eye specialist who was aware that he is an athlete subject to doping control, (ii) the medication was prescribed to him, (iii) the interpretation of the use of ACZ in the prohibited list is ambiguous and (iv) he cannot be expected to follow all of the required steps in all circumstances to ensure that his medications do not contain prohibited substances (cf. CAS 2013/A/3327 & CAS 2013/A/3335).

92. The Athlete further submit that he immediately admitted the ADRV, he was fully cooperative, did not request the opening of the B-Sample and he has not competed at any national or international level competition, despite the fact that he was given only a reprimand by the Appealed Decision. For those reasons, the period of ineligibility should start on 10 October 2019 (i.e. date of sample collection), alternatively on 29 November 2019 (i.e. notification of Notice of Charge) or 26 December 2019 (i.e. notification of ADDP decision).

VI. JURISDICTION

93. Article R47 para. 1 of the CAS Code provides as follows:

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

94. Article 13.2 of the NADA ADR provides as follows:

"*13.2.1 Appeals Involving International-Level Athletes or International Events*

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS."

95. In the present matter, the jurisdiction of the CAS is not contested by the Parties and confirmed by the OoP signed by all Parties.

96. Consequently, the Sole Arbitrator is satisfied that he has jurisdiction over the present appeal.

VII. ADMISSIBILITY

97. Article R49 of the CAS Code provides in its relevant parts, as follows:

"*In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the appeal shall be twenty-one days from the receipt of the decision appealed against.*"

98. Article 13.7.2 of the NADA ADR provides, in its relevant parts, as follows:

"[…] *the filing deadline for an appeal or intervention filed by WADA shall be the later of:*

(a) Twenty-one days after the last day on which any other party in the case could have appealed, or

(b) Twenty-one days after WADA's receipt of the complete file relating to the decision."

99. It follows from the above that the complete case file was communicated to the Appellant on 20 April 2020. The Appellant filed its Statement of Appeal on 11 May 2020 and therefore within the prescribed deadline of 21 days. The Appellant's appeal also complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

100. Therefore, the appeal is admissible.

VIII. OTHER PROCEDURAL MATTERS

A. The admissibility of the First Respondent's Answer

101. The Second Respondent has objected to the admissibility of the First Respondent's Answer on the basis that the First Respondent has supported the legal position of the Appellant in the present procedure and requested an increase in the Second Respondent's period of ineligibility. However, the First Respondent did not file an appeal against the Appealed Decision and is therefore not permitted to seek an increase of the sanction imposed against the Athlete by the ADAP.

102. In this regard, the Sole Arbitrator notes that the First Respondent was generally allowed to file an appeal against the decision of the ADAP pursuant to Article 13.2.3 of the NADA ADR. In addition, NADA could have filed either a separate appeal or a cross appeal in accordance with Article 13.2.4 of the NADA ADR.

103. In this regard, the Sole Arbitrator concurs with the position of the Second Respondent that the First Respondent seeks a change of the Appealed Decision that goes beyond the mere statement of defence by agreeing with WADA's position in the present appeal proceedings and requesting an increase in the Athlete's ineligibility period. However, such a relief can only be sought by way of an appeal of the decision of the ADAP.

104. The Sole Arbitrator finds that the Answer of the First Respondent cannot be considered as a genuine appeal against the Appealed Decision. The First Respondent's Answer does not contain any indication – apart from the relief sought – that the First Respondent's submission should be construed as an appeal under Article 13.2.4 of the NADA ADR. The Answer of the First Respondent does also not fulfil the requirements under Article R48 of the CAS Code.

105. Therefore, the First Respondent should have sought an increase in the Athlete's ineligibility sanction of the Athlete by filing an independent appeal, respectively, cross appeal. However, the First Respondent failed to file an appeal against the Appealed Decision. Consequently, its requests for relief are declared inadmissible. Nevertheless, this does not mean that the Answer as a whole is declared inadmissible and the arguments, evidence and exhibits may still be considered as the First Respondent's statement of defence as long as and insofar as they do not go beyond this.

B. The agreement between the Appellant and Second Respondent of 11 March 2021 and the consequences thereof

106. The Sole Arbitrator also needs to discuss the consequences of the Appellant's letter of 11 March 2021 to which the Second Respondent agreed. However, the First Respondent did not agree to the Appellant's and Second Respondent's agreement and, instead, requested for the Sole Arbitrator to decide the present proceedings based on the Parties' written submissions. The question therefore arises as to the consequences of the Appellant's letter of 11 March 2021 to which the Second Respondent fully agreed.

107. As correctly pointed out by the Appellant, the agreement between the Appellant and the Second Respondent do not fulfil the requirements for rendering a consent award under Article R56 para. 2 of the CAS Code, because such "*arbitration award rendered by*

consent of the parties" requires the consent of all parties to the dispute. The lack of the First Respondent's consent means that the requirements for a consent award under Article R56 para. 2 of the CAS Code are not met.

108. However, the letter of 11 March 2021 can be regarded as a modification of the Appellant's and Second Respondent's requests for relief that they originally submitted with their Statement of Appeal, Appeal Brief and Answer, respectively. The First Respondent has not objected to the admissibility of the modified requests filed by WADA and agreed to by the Second Respondent. By doing so, the First Respondent authorised the Sole Arbitrator to consider these modified requests of the Appellant and Second Respondent in the present matter.

109. In the light of the above, the Sole Arbitrator considers that the Appellant and Second Respondent have modified their requests for relief initially submitted with their Statement of Appeal, Appeal Brief and Answer, respectively. However, the Sole Arbitrator emphasises that he is not bound by these modified requests and he has the power to review the case in accordance with the *de novo* principle set out in Article R57 para. 1 of the CAS Code.

IX. APPLICABLE LAW

110. Article R58 of the CAS 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 absence of such 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.*"

111. The Sole Arbitrator finds that the NADA ADR (2015 edition) are the applicable regulations in this matter. Subsidiarily, Indian law shall apply, being the law of the country in which the NADA is domiciled.

X. SCOPE OF REVIEW

112. Article R57 of the CAS Code reads – in its pertinent parts – as follows:

> "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*"

113. In addition, Article 13.1.1 of the NADA ADR provides as follows:

> "*The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issue or scope of review before the initial decision maker.*"

In the light of the foregoing, the Sole Arbitrator is satisfied that he has full power to review *de*

novo the dispute and the evidence before him in order to examine the appropriate consequences of the ADRV to be imposed on the Second Respondent and the commencement thereof.

XI. MERITS

114. The Sole Arbitrator first notes that the Athlete's consumption of ACZ constitutes an ADRV under Article 2.1 of the NADA ADR. WADA has also accepted that the Athlete did not commit the ADRV intentionally. This is undisputed among the Parties.

115. Accordingly, the basic period of ineligibility is two years under Article 10.2.2 of the NADA ADR.

116. In addition, the Sole Arbitrator notes that – according to the modified requests accepted by the Athlete on 11 March 2021 – it can no longer assumed that he argues that he bears No Fault or Negligence. Accordingly, the Sole Arbitrator needs to discuss whether the Athlete bears No Significant Fault or Negligence under Article 10.5 of the NADA ADR

117. The Sole Arbitrator notes that the present dispute pivots around the following questions:

i. Did the Athlete establish that he bears No Significant Fault or Negligence?

ii. In the affirmative, what are the appropriate Consequences?

A. Did the Athlete establish that he bears No Significant Fault or Negligence?

118. As an initial matter, the Sole Arbitrator notes that No Significant Fault or Negligence is defined in the NADA ADR as follows:

> "*The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.*"

119. In addition, Article 10.5.1.1 of the NADA ADR provides as follows:

> "*Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the* Athlete's or other Person's degree of Fault."

120. The Sole Arbitrator further notes that all Parties relied in their submissions on the "Cilic test" developed by the CAS panel in *CAS 2013/A/3327 & CAS 2013/A/3335* in which the CAS panel held as follows:

> "*The breadth of sanction is from 0 – 24 months. As Article 10.4 says, the decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. The Panel recognises the following degrees of fault:*

a. Significant degree of or considerable fault.

b. Normal degree of fault.

c. Light degree of fault.

Applying these three categories to the possible sanction range of 0 – 24 months, the Panel arrive at the following sanction ranges:

a. Significant degree of or considerable fault: 16 – 24 months, with a 'standard' significant fault leading to a suspension of 20 months.

b. Normal degree of fault: 8 – 16 months, with a 'standard' normal degree of fault leading to a suspension of 12 months.

c. Light degree of fault: 0 – 8 months, with a 'standard' light degree of fault leading to a suspension of 4 months.

In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.[…]

At the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product."

121. In addition, the Sole Arbitrator notes that the CAS panel in *CAS 2016/A/4371* modified the "Cilic test" in the light of the 2015 WADA Code (which are also relevant for the 2015 NADA ADR, applicable in the present matter):

"*In determining Appellant's 'degree of fault' pursuant to Article 10.5.1.1 of the* [ADR] *and the new 2015 WADC* […] the Panel adopts *Cilic's guidelines for determining the appropriate period of ineligibility based on three categories of fault and sanction ranges. However, because the language of Article 10.5.1.1 is different from Article 10.4.1 of the 2009 WADC (which did not require an initial determination of whether the athlete's degree of fault is 'significant'), it is necessary to modify slightly the descriptions of the three categories of fault as follows:*

a. 'considerable degree of fault': 16-24 months, with a 'standard' considerable degree of fault leading to a suspension of 20 months.

b. 'moderate degree of fault' (preferable to 'normal degree of fault,' which sends

the wrong message): 8 – 16 months, with a 'standard' moderate degree of fault leading to a suspension of 12 months.

c. 'light degree of fault': 0 – 8 months, with a 'standard' light degree of fault leading to a suspension of 4 months."

122. Taking the above into account, the Sole Arbitrator first notes that it is undisputed among the Parties that the Athlete has established how the prohibited substance ACZ entered his system. Insofar as the First Respondent disputes that the Athlete did not prove the origin of the substance, it cannot rely on this, as this goes beyond the scope of the mere statement of defence set out above.

123. The Sole Arbitrator recalls that there is an inherent risk for an anti-doping rule violation when athletes take medication. As part of their duty of care, athletes are therefore requested to, *inter alia*, follow the steps mentioned by the CAS panel in *CAS 2013/A/3327 & CAS 2013/A/3335*, i.e. "*(i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product*."

124. Accordingly, athletes in general and the Second Respondent in particular bear a personal duty under the applicable anti-doping regulations to ensure that no prohibited substance enter their system. This also means that athletes must take strict measures to verify that the prescribed medication does not contain any prohibited substances, even if the medication was prescribed by a doctor (cf. CAS 2006/A/1133; CAS 2017/A/5015 & 5110). In other words, medication prescribed by a doctor does not exempt an athlete from doing everything reasonable to prevent a doping violation (cf. CAS 2006/A/1133; CAS 2012/A/2959).

125. In the present case, the Athlete was suffering from discomfort in his right eye and, *inter alia*, sought medical consultation from Dr Narang, an eye specialist. Dr Narang prescribed the Athlete a list of eleven medications, including "CAP IOPAR-SR". However, the Athlete did not take the necessary precautions to ensure that the prescribed medications did not contain prohibited substances. Particularly, the Athlete did not make any independent search of the medications or read the label on the packaging. Nevertheless, the fact that the Athlete was in pain, consulted a qualified eye specialist and took prescribed medication purchased from a pharmacy cannot be disregarded. In consideration of the circumstances of the present matter, the Sole Arbitrator finds that the Athlete's fault was not significant.

B. What are the appropriate Consequences?

126. For the determination of the appropriate range of sanction applicable, the Sole Arbitrator takes guidance from CAS jurisprudence mentioned above. Accordingly, the Sole Arbitrator must first determine – based on the objective factors of the present matter – whether the Athlete's degree of fault falls within the category of (i) considerable degree of fault, (ii) moderate degree of fault or, (iii) light degree of fault.

127. Considering that the Athlete is an International-Level Athlete who competes in the

highest competitions of his sport, the Athlete must have been aware that there is an inherent risk in the consumption of medication. The Athlete relied on the advice of his doctor without taking reasonable steps of his own to prevent a doping violation. The Athlete did not but should have taken the most basic steps, such as reading the label of the product, cross-checking all ingredients on the label with the list of prohibited substances or making internet searches of the product. Therefore, the Sole Arbitrator comes to the conclusion that his degree of fault is considerable.

128. Accordingly, the appropriate period of ineligibility shall be between 16 and 24 months.

129. In consideration of the Athlete's experience as an International-Level Athlete as well as the painful situation he found himself in and the fact that he only took the medication within the prescribed period, the Sole Arbitrator determines that a sanction of 16 months is appropriate, as his degree of fault is at the lower end of the considerable degree of fault category.

130. In the light of the above, the Sole Arbitrator finds that the appeal is to be partially granted and that the appropriate period of ineligibility is 16 months.

C. Start date of period of ineligibility

131. Article 10.11 of the NADA ADR states, in its relevant parts, as follows:

> "*Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*
>
> *10.11.1 Delays Not Attributable to the Athlete or other Person*
>
> *Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, NADA may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.*"

132. The Appellant and Second Respondent have requested that the start of the period of ineligibility shall be backdated to commence on 26 December 2019. In turn, the First Respondent has not made any submissions in this respect.

133. The Sole Arbitrator finds that it is appropriate to date the start of the period of ineligibility back to 26 December 2019, i.e. the date of the decision rendered by the ADDP. This is justified based on the fact that the ADDP determined that the Athlete shall be sanctioned with a one-year period of ineligibility. The erroneous decision of the ADAP panel and the fact that the ADAP did not impose a period of ineligibility on the basis of an incorrect legal assessment of the NADA ADR and the circumstances of the present matter, justify that the period of ineligibility commences on the date of the first imposition of a period of ineligibility against the Athlete, i.e. on 26 December 2019.

D. Disqualification of results

134. Article 9.1 of the NADA ADR states as follows:

> "*An antidoping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.*"

135. Against this background, the Sole Arbitrator finds that all results obtained by the Athlete at the Elite Men Boxing Championship 2019 in Himanchal Pradesh, India, shall be disqualified, along with all resulting consequences including the forfeiture of ay titles, awards, medals, points and prize money, and/or appearance money.

XII. COSTS

(…)

* * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by World Anti-Doping Agency on 11 May 2021 against National Anti-Doping Agency of India and Mr Sumit Sangwan with respect to the decision rendered by the NADA Anti-Doping Panel in the matter of Sumit Sangwan on 3 March 2020 is upheld.

2. The decision of the NADA Anti-Doping Appeal Panel, dated 3 March 2020, is set aside. Mr Sangwan is found to have committed an anti-doping rule violation and Mr Sanwan is subject to a period of ineligibility of sixteen (16) months.

3. The period of ineligibility shall be backdated to commence on 26 December 2019.

4. Mr Sangwan's results in the competition where the Anti-Doping Rule Violation occurred, namely the Elite Men Boxing Championship 2019 in Himanchal Pradesh, India, shall be disqualified, along with all resulting consequences including the forfeiture of ay titles, awards, medals, points and prize money, and/or appearance money.

5. (…).

6. (…).

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

Seat of the arbitration: Lausanne, Switzerland
Operative part of the Arbitral Award notified on 7 June 2021
Date: 29 July 2025

THE COURT OF ARBITRATION FOR SPORT

Jeffrey G. Benz
Sole Arbitrator