**CAS 2021/A/8145 Watford Association Football Club Limited v. Stade Rennais Football Club**

# ARBITRAL AWARD

delivered by the

# COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Panel: Mr Jacopo Tognon, Attorney-at-law in Padua, Italy
Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain
Mr Efraim Barak, Attorney-at-law in Tel-Aviv, Israel

in the arbitration between

**Watford Association Football Club United**, Watford, United Kingdom

represented by Mr Alfredo Garzón and Ms Patricia Galán, Senn, Ferrero, Asociados, Sports & Entertainment, SLP, Madrid, Spain

**- Appellant -**

and

**Stade Rennais Football Club**, Rennes, France

represented by Ms Patricia Moyersoen and Mr Nicolas Bône, Moyersoen Avocats, Paris, France

**- Respondent -**

## I. PARTIES

1. Watford Association Football Club United (the "Appellant" or "Watford") is a professional football club based in Watford, United Kingdom. It is a member of the English Football Association (the "FA") which in turn is affiliated with the Union of European Football Associations ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Stade Rennais Football Club (the "Respondent" or "Stade Rennais") is a professional football club based in Rennes, France. It is a member of the French Football Federation (the "FFF"), which in turn is affiliated with UEFA and FIFA.

3. The two clubs are hereinafter jointly referred to as the "Parties".

## II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions as well as evidence adduced. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence it considers necessary to explain its reasoning.

### A. Background Facts

5. On 8 August 2019, the Appellant and the Respondent entered into a transfer agreement (the "Agreement") concerning a permanent transfer of the professional football player Mr Ismaïla Sarr born on 25 February 1998 in Senegal (the "Player") from the Respondent to the Appellant (the "Transfer").

6. Article 3 para. 1 of the Agreement established a fixed transfer fee payable in five equal annual instalments (the "Transfer Fee") and provided as follows:

> *"3.1. In consideration of the Transfer, Watford agrees to pay to the Seller, subject to the satisfaction of the Payment Conditions (defined below), the sum of €35,000,000 (thirty-five million Euros) (the '**Transfer Fee**') payable as follows:*
>
> *3.1.1. €8,000,000 (eight million Euros) payable upon the satisfaction of the Payment Conditions (as defined below);*
>
> *3.1.2. €8,000,000 (eight million Euros) on 31 August 2020;*
>
> *3.1.3. €8,000,000 (eight million Euros) on 31 August 2021;*
>
> *3.1.4. €6,000,000 (six million Euros) on 31 August 2022; and*
>
> *3.1.5. €5,000,000 (five million Euros) on 31 August 2023."* (emphasis in original)

7. Furthermore, the Agreement envisaged certain contingent payments constituting an additional compensation of the Transfer, including a fixed amount for 20 appearances of the Player (the "Contingent Payment"). Accordingly, Article 4 para. 2 in its relevant parts provided as follows:

> *"4.2. In addition to the Transfer Free and as further consideration of the Transfer, Watford agrees to pay the Seller the following sums:*
>
> *4.2.1. the sum of €500,000 (five hundred thousand Euros) upon the Player completing 20 Starting Appearances;*
>
> *[…]*
>
> *The following provisions shall apply in respect of this clause 4.2:*
>
> *(a) '**Starting Appearance**' shall mean the Player entering the field of play for Watford as a member of the starting eleven in the Premier League, the UEL or the UCL, or in matches player in the quarter final stages onwards of The FA Cup and EFL Cup;*
>
> *[…]*
>
> *(d) any sum(s) falling due under this clause 4.1 shall be paid by Watford to the Seller within 30 days of the occurrence of the event triggering payment."* (emphasis in original)

8. The terms of payment of all the Respondent's receivables under the Agreement were set out in Article 6 thereof. Article 6 para. 1 of the Agreement provided in the pertinent part as follows:

> *"6.1. Any payment falling due to the Seller under this Agreement shall be paid via the accounts of The FA, subject to receipt by Watford of a valid invoice from the Seller. Such invoice must be sent to the following addressee for Watford […]."*

9. Moreover, Article 6 para. 2 of the Agreement provided that:

> *"6.2. Should WATFORD fail to carry out the undertakings mentioned above within the required times, the parties expressly agree that WATFORD will pay the Seller a sum equal to 5% of the total amount of the transfer fee mentioned above for each full month of delay, as a lump sum payment for damages and interest, without any need for prior notification. In general, if there are any difficulties in payment, the expenses for recovery of the debt, of whatever nature, will be at the expense of WATFORD."*

10. On the basis of the Agreement, the Player was effectively permanently transferred from the Respondent to the Appellant.

11. On 13 February 2020, the Respondent contacted the Appellant by e-mail and informed it that Stade Rennais had not received a part of the first instalment of the Transfer Fee in the amount of EUR 76,666.66.

12. On 28 May 2020, the Respondent sent another e-mail to the Appellant with a reminder of the foregoing missing payment.

13. On 30 June 2020, the Respondent again contacted the Appellant by e-mail in order to confirm the amount due as Contingent Payment. At the same time, the Respondent once again reminded the Appellant of the outstanding payment of the first instalment of the Transfer Fee.

14. Around the beginning of July 2020, Mr Arnaud (Mogi) Bayat, an intermediary involved in the Transfer, contacted the President of the Respondent, Mr Nicolas Holveck, and warned him about the Appellant encountering difficulties in paying the second instalment of the Transfer Fee within the agreed date. The reason for such projected delay was the financial hardship the Appellant was facing as a result of the COVID-19 pandemic. The Parties further discussed the issue of payment of the due amounts under the Agreement on several occasions between July 2020 and October 2020.

15. In this regard, on 21 August 2020, the Respondent contacted the Appellant by e-mail, providing the latter with an invoice regarding the Contingent Payment and related solidarity contribution.

16. On 9 September 2020, the Respondent sent an e-mail to the Appellant in which it listed its outstanding receivables under the Agreement, including the following amounts (the "Principal"):

    - the residual part of the first instalment of the Transfer Fee (EUR 76,666.00);

    - the second instalment of the Transfer Fee (EUR 7,676,666.67); and

    - the Contingent Payment (EUR 477,500.00).

    Furthermore, the Respondent reminded the Appellant of the content of Article 6 para. 2 of the Agreement and requested the Appellant's response within 8 days.

17. On 16 September 2020, Watford sent an email to Stade Rennais proposing to pay the latter EUR 7,676,666.67 by 30 September 2020, EUR 76,666 by 31 October 2020 and EUR 477,500 by 31 October 2020.

18. On 24 September 2020, the Respondent issued a request for payment of the outstanding amounts, including the Principal, and gave the Appellant a time limit of until 30 September 2022 to rectify the situation.

19. On 1 October 2020, the Appellant responded to the abovementioned request for payment, noting that in addition to the necessity to deal with the consequences of the COVID-19 pandemic, it also had to bear the effects of being relegated from the Premier League.

At the same time, the Appellant declared that the Principal would be paid in full by 31 October 2020 at the latest.

20. On 9 October 2020, the Respondent replied to the Appellant's letter, stating that it did not accept the Appellant's proposal and thus requesting an immediate payment of the due amounts. In its correspondence, the Respondent warned that should the Appellant fail to execute payment of the full outstanding amount within 10 days, it would refer the matter to FIFA. In addition, the Respondent expressed its intention to implement the penalty clause provided for in Article 6 para. 2 of the Agreement.

21. On 21 October 2020, Mr Bayat sent an email to Stade Rennais' President in which *inter alia*, he fostered an amicable solution between the Parties and made a proposal to such purpose. On the same date, Watford's Finance Director, Mr Emiliano Russo, sent another email to Stade Rennais' President confirming that Mr Bayat was authorized by Watford to negotiate and find an amicable solution.

## B. Proceedings before the FIFA Players' Status Committee

22. On 27 October 2020, the Respondent lodged a claim before FIFA against the Appellant, requesting payment of the following amounts:

- EUR 8,230,823.67 corresponding to the Principal, i.e.:

  i. EUR 76,666.00 for the remaining balance of the first instalment of the Transfer Fee, with a 5% late interest as of 21 August 2019;

  ii. EUR 477,500.00 for the Contingent Payment, with a 5% late interest as of 21 August 2020;

  iii. EUR 7,676,666.67 for the second instalment of the Transfer Fee, with a 5% default interest as of 31 August 2020;

- EUR 869,082.86 in accordance with Article 6 para. 2 of the Agreement;

- EUR 10,000.00 as attorney fees.

23. On 3 December 2020, the Appellant executed a transfer of the amount of EUR 76,666.67 through the FA in favour of the Respondent, corresponding to the residual part of the first instalment of the Transfer Fee.

24. In its reply to the Respondent's claim, the Appellant argued that non-compliance with its financial obligations originated in a genuine *force majeure* event caused by the COVID-19 pandemic. The Appellant indicated that it was experiencing significant financial difficulties as a result of two unexpected events which occurred cumulatively in 2020, i.e. the COVID-19 pandemic and its relegation from the Premier League. According to the Appellant, said events led to a material change in its financial and sporting condition. As a consequence, the Appellant attempted in good faith to enter into negotiations with the Respondent in order to agree on a revised schedule of payment of the Principal.

However, the Respondent did not express any interest in entering into such negotiations. The Appellant further considered that the principle of *rebus sic stantibus* shall apply in this case. Consequently, the Appellant requested the FIFA Players' Status Committee (the "FIFA PSC") to suspend its obligation to pay the Contingent Payment and the second instalment of the Transfer Fee for a 12-month period. In the alternative, the Appellant requested the FIFA PSC to be granted a deadline of until 31 August 2021 to pay the abovementioned receivables and to reject all requests regarding default interest. The Appellant further requested the FIFA PSC to declare Article 6 para. 2 of the Agreement null and void, and to reject the request of payment of the attorney fees.

25. In its replica, the Respondent asserted that it tried to conduct negotiations with the Appellant. However, the Respondent emphasized that some of the outstanding amounts were due since August 2019 and that this demonstrated the Appellant's bad faith.

26. On 26 March 2021, the Appellant executed a payment in favour of the Respondent in the amount of EUR 1,000,000.00.

27. On 20 April 2021, the FIFA PSC rendered its decision (the "Appealed Decision") in which the claim of the Respondent was partially accepted. The FIFA PSC ordered the Appellant to pay to the Respondent the following amounts:

- *"18% interest p.a. over the amount of EUR 76,666 as from 21 August 2020 until 11 December 2020;*

- *EUR 477,500 plus 5% interest p.a. as from 22 August 2020 until the date of effective payment;*

- *EUR 7,676,666.67 plus 18% interest p.a. as from 1 September 2020 until the date of effective payment".*

28. On 2 June 2021, the Appellant transferred in favour of the Respondent the amount of EUR 7,154,166.67 by means of which the full amount of the Principal became paid, yet with a substantial delay.

29. On 18 June 2021, the FIFA PSC notified to the Parties the grounds of the Appealed Decision. In principle, the FIFA PSC emphasized that FIFA did not declare the COVID-19 pandemic to constitute *per se* a *force majeure* event. Furthermore, the FIFA PSC found that the Appellant could reasonably have anticipated a relegation during the term of the Agreement, as the Agreement provided for payment of the Transfer Fee over a five-year span. It was therefore up to the debtor to plan all necessary measures in order to fulfil its payment obligations in accordance with the principle of *pacta sunt servanda*. Therefore, according to the FIFA PSC, the Appellant did not have a valid reason not to pay the amounts in question.

30. Furthermore, the FIFA PSC noted that Article 6 para. 2 of the Agreement stipulated a 5% interest rate per month and found it to be disproportionate. As a result, the FIFA PSC decided to reduce the interest contractually agreed between the Parties to the rate of 18% *p.a.* in accordance with its well-established jurisprudence for comparable matters. In

addition, in view of the fact that the amount of EUR 76,666.00 had effectively been paid during the course of the proceedings, the FIFA PSC decided to award a default interest over this amount for the defaulted period. Finally, the FIFA PSC rejected the Respondent's request for attorney fees.

31. On 25 June 2021, Stade Rennais issued an invoice to Watford further to the Appealed Decision's finding on outstanding interest for an amount of EUR 1,063,699.62.

32. On 8 July 2021, the Appellant transferred in favour of the Respondent *ad cautelam* the amount of EUR 298,491.77, constituting the default interest accrued over the Principal amount, calculated at the 5% *p.a.* rate.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 9 July 2021, the Appellant lodged a Statement of Appeal in accordance with Article R47 of the Code of Sports-related Arbitration (2021 edition)(the "CAS Code") against Stade Rennais before the Court of Arbitration for Sport (the "CAS") with respect to the Appealed Decision, requesting that the proceedings be conducted in English and that the dispute be submitted to a Panel of three arbitrators, appointing in this regard Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain.

34. On 16 July 2021, the Appellant sent a letter to the CAS Court Office in which it requested the suspension of the time limit to file the Appeal Brief until the language of the proceedings had been established. Subsidiarily, the Appellant requested to be granted an extension of the time limit to file the Appeal Brief in accordance with Article R32 of the CAS Code by 20 days or further subsidiarily by 10 days.

35. On 19 July 2021, the CAS Court Office informed the Appellant that should CAS be able to initiate arbitration proceedings – e.g. provided that the requirements laid out in Article R48 of the CAS Code have been fulfilled – the time limit for filing the Appeal Brief would be considered suspended and the Respondent would be invited to comment on the Appellant's request.

36. On 21 July 2021, the CAS Court Office initiated the arbitral procedure. It was confirmed that the Appellant's time limit to file the Appeal Brief was suspended pending the resolution of the language of the proceedings. The Appellant was automatically granted a 10-day extension to file the Appeal Brief under Article R32 of the CAS Code, while the Respondent was invited to state whether it objected to grant the Appellant an additional extension of 10 days. The Respondent was informed that its silence would be deemed as acceptance of the Appellant's request. At the same time, the Respondent was requested to nominate an arbitrator by 30 July 2021 and was given a time limit to object to the language of the proceedings until 28 July 2021. Finally, the Parties were invited to inform the CAS Court Office by 28 July 2021 if they were interested in submitting the dispute to CAS mediation.

37. On 27 July 2021, the CAS Court Office informed the Parties that the Respondent's time limit to object to the Appellant's request for extension of the time limit to file the Appeal Brief had lapsed and thus it was deemed that the Respondent accepted such request. Moreover, the CAS Court Office noted that unless the Respondent objected to

the language of the proceedings within the granted deadline, all written submissions should be filed in English. At the same time, the CAS Court Office informed that the Appellant's Appeal Brief deadline remained suspended until further notice.

38. On the same day, the Respondent confirmed its representation in these proceedings and provided the CAS Court Office with the relevant Power of Attorney, agreed to English as the language of the proceedings and nominated as an arbitrator Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel.

39. Still on 27 July 2021, the CAS Court Office acknowledged receipt of the Respondent's correspondence, informed the Parties that the Appellant's time limit to file the Appeal Brief was no longer suspended and granted it a 20-day extension in this respect. Finally, the CAS Court Office noted that the Respondent was not interested in submitting the dispute to mediation, and thus confirmed that the proceedings would continue under the CAS arbitration rules.

40. On 28 July 2021, the CAS Court Office transmitted to the Parties the "Arbitrators' Acceptance and Statement of Independence" form completed by Mr Jordi López Batet together with a disclosure made further to Article R33 of the CAS Code, which neither of the Parties subsequently challenged pursuant to Article R34 of the CAS Code.

41. On 2 August 2021, FIFA provided a clean copy of the Appealed Decision and renounced its right to request its possible intervention in this proceeding, further to Article R41.3 of the CAS Code.

42. On 16 August 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

43. On 17 August 2021, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondent to file its Answer within 20 days upon receipt of this correspondence by email.

44. On 19 August 2021, the Respondent requested that the time limit to file its Answer be fixed once the Appellant had paid the advance of costs, further to Article R55 of the CAS Code.

45. On the same day, inter alia the CAS Court Office informed the Parties that the Respondent's time limit to file the Answer was set aside and that a new deadline would be fixed upon payment by the Appellant of its share of the advance of costs further to Article R55 of the CAS Code.

46. On 24 August 2021, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and accordingly invited the Respondent to submit its Answer within 20 days.

47. On 30 August 2021, the Respondent stated that it did not intend to pay its share of the advance of costs and requested a 20-day extension of the time limit to file its Answer.

48. On the same day, the CAS Court Office acknowledged receipt of the foregoing, automatically granted the Respondent a 10-day extension further to Article R32 of the CAS Code and invited the Appellant to indicate by 1 September 2021 whether it objected to the Respondent's request for an additional extension of 10 days.

49. On 1 September 2021, the Appellant agreed to the Respondent's request for an additional 10-day extension to file the Answer, which was subsequently granted.

50. On 4 October 2021, the CAS Court Office confirmed receipt of the Appellant's payment of the totality of the advance of costs.

51. On the same day, the Respondent lodged its Answer in accordance with Article R55 of the CAS Code.

52. On 5 October 2021, the CAS Court Office acknowledged receipt of the Respondent's Answer and invited the Parties to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

53. On 7 October 2021, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

| | |
|---|---|
| President: | Mr Jacopo Tognon, Attorney-at-law in Padua, Italy; |
| Arbitrators: | Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain;<br>Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel. |

54. On 19 October 2021, the Respondent informed the CAS Court Office that it did not consider holding a hearing to be necessary and that the Panel may issue its decision solely based on the Parties' written submissions.

55. On 22 October 2021, the Appellant informed the CAS Court Office that in its view it was not necessary, *prima facie*, to hold a hearing in this case. However, the Appellant considered it necessary to clarify certain issues raised by the Respondent in its Answer and therefore requested authorization to file another written submission.

56. On 29 October 2021, the CAS Court Office informed the Parties that the Panel had decided to allow the Parties to file a further round of written submissions and that the decision on whether to hold a hearing would be taken at a later stage. Accordingly, further to Article R44.1 of the CAS Code, the CAS Court Office invited the Appellant to file its Reply.

57. On 8 December 2021, after having been granted an extension further to Article R32 of the CAS Code, the Appellant filed its Reply in accordance with Article R44.1 of the CAS Code. On the same date, the CAS Court Office invited the Respondent to file its Rejoinder.

58. On 17 January 2022, after having been granted an extension further to Article R32 of the CAS Code, the Respondent filed its Rejoinder.

59. On 18 January 2022, the CAS Court Office acknowledged receipt of the Respondent's Rejoinder and invited the Parties again to inform the CAS Court Office whether they preferred a hearing to be held or for the Panel to issue an award based solely on the Parties' written submissions.

60. On 30 January 2022, the Appellant indicated that it requested a hearing to be held in this case.

61. On 31 January 2022, the Respondent indicated that it did not consider a hearing to be necessary in this case.

62. On 3 February 2022, the CAS Court Office informed the Parties that pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in the present proceeding. In this regard, the Parties were invited to inform the CAS Court Office whether they had a preference concerning a hearing held in-person or by videoconference.

63. On 7 February 2022, the Appellant indicated that it requested a hearing to be held by videoconference.

64. On 8 February 2022, the Respondent indicated that it requested a hearing to be held in person.

65. On 9 February 2022, the CAS Court Office informed the Parties that in light of the circumstances of the case, including the ongoing COVID-19 pandemic, the hearing would be held by videoconference further to Article R44.2 and R57 of the CAS Code.

66. On 17 February 2022, after consulting the Parties as to their availability, the CAS Court Office inter alia confirmed that the hearing would take place on 28 March 2022.

67. On 22 February 2022, the Respondent provided its list of participants for the hearing.

68. On 24 February 2022, the Appellant provided its list of participants for the hearing.

69. On 7 March 2022, the CAS Court Office requested the Parties to sign and return a copy of the Order of Procedure.

70. On 9 March 2022, the Appellant made comments to the Order of Procedure concerning the amount in dispute.

71. On the same day, the CAS Court Office informed the Appellant that it may make any comments or notations it wishes on the Order of Procedure.

72. On 14 March 2022, the Appellant returned to the CAS Court Office a signed copy of the Order of Procedure in which it made comments on Item 11.2 thereof.

73. On 15 March 2022, the Respondent's transmitted a copy of its signed Order of Procedure dated 14 March 2022 to the CAS Court Office with comments on Item 11.2 of the Order of Procedure.

74. On 23 March 2022, the CAS Court Office sent to the Parties a Draft Tentative Hearing Schedule for their review.

75. On 24 March 2022, the Respondent updated its list of participants for the hearing.

76. On the same day, inter alia the CAS Court Office noted that the Respondent had not provided any contact details for the two new participants and thus no Webex invitations would be sent to them directly.

77. On 25 March 2022, the Appellant proposed revisions of the Draft Tentative Hearing Schedule.

78. On the same day, the CAS Court Office noted that the Respondent had not provided any comments on the Draft Tentative Hearing Schedule and that the deadline provided for it had lapsed. At the same time, the CAS Court Office informed that the Hearing Schedule may be addressed by the Panel at the outset of the hearing and further recalled that the Panel may ultimately decide to amend the schedule for the purposes of a proper and fair hearing.

79. On 28 March 2022, a hearing in these proceedings took place. In addition to the Panel and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

    On behalf of the Appellant:

    - Mr Alfredo Garzón, legal counsel;
    - Ms Patricia Galán, counsel;
    - Mr Mogi Bayat, witness;
    - Mr Emiliano Russo, witness;
    - Mr Gino Pozzo, witness.

    On behalf of the Respondent:

    - Ms Patricia Moyersoen, counsel;
    - Mr Nicolas Bône, counsel.
    - Mr Benoit Muller, Financial Director of Stade Rennais;
    - Ms Elodie Crocq, Legal Director; and
    - Mr Antoine Le Gall, Translator and in-house counsel.

80. At the opening of the hearing, the Parties confirmed that they had no objections to the composition of the Panel. During the hearing, the Parties made submissions in support of their respective arguments.

81. During the hearing, the Panel heard witness testimony from Mr Mogi Bayat, Mr Emiliano Russo and Mr Gino Pozzo as witnesses called by the Appellant.

82. Mr Mogi Bayat, the football intermediary who was involved in executing the Transfer of the Player on the side of Watford, stated in particular that at the end of June 2020 or at the beginning of July 2020, he contacted on the phone the Executive President of Stade Rennais, Mr Holveck. He said they had a very open and friendly discussion regarding a possible delay of payment of the second instalment of the Transfer Fee. Mr Bayat tried to find a reasonable solution regarding a reschedule of payments that could satisfy both Parties. The offers made by Mr Bayat in this conversation were his own. The feeling of Mr Bayat was that they were going to find an agreement in this respect. Subsequently, Mr Bayat talked with Mr Gino Pozzo between 1 and 21 October 2020. However, he was not involved in preparations of Watford's letter to Stade Rennais dated 1 October 2020. Mr Bayat had previously acted as an intermediary in several other transfers. He was also an intermediary in other transfers between Watford and Stade Rennais and has never before heard of any payment delays on the side of Watford. He did not remember who materially prepared the Agreement.

83. Mr Emiliano Russo, the Chief Financial Officer of Watford, stated in particular that the Appellant never delays payment of its financial obligations. Delays happened only during the COVID-19 pandemic. In this period, many transactions were not executed on time due to liquidity problems. Mr Russo underlined that players are protected creditors and Watford has the obligation to pay their salaries first. Mr Russo recalled that the payment proposal of 16 September 2020 was made because he believed that Watford would have enough money to fulfil its obligations by the end of September 2020 in light of some negotitaions that were being held with banks. However, in the end it turned out that it was not possible. The next payment proposal was made on 1 October 2020. Both these proposal were made by him as Chief Executive Officer of Watford. Mr Russo stated he was not aware of the offers made to Stade Rennais by Mr Bayat. The reason for the lack of payment of the second instalment of the Transfer Fee was the lack of liquidity. On the other hand, the amount of EUR 76,666 pertaining to the first instalment was not paid on time because it was disputed at the time. All payments towards Stade Rennais were made through the FA. Mr Russo was not involved in drafting the Agreement.

84. Mr Gino Pozzo, the owner and the Vice-President of Watford, stated in particular that the reason for the lack of payment of the second instalment of the Transfer Fee was the lack of liquidity caused by the COVID-19 pandemic. The development of the pandemic was unpredictable and the financial situation of the club became so critical that it was not in a position to cover its debts. In England, the players are protected creditors so their salaries had to be paid first. The Appellant lacked sufficient financing – the line of credit of Watford dropped from 25 million to 10 million euro. During the pandemic, the competitions were suspended and the market restarted in August 2020. The payment dates of the Transfer Fee were set up in the Agreement on 31 August each year in order to allow Watford to collect its receivables from summer transfer windows. The shift of the transfer windows disrupted this balance. While making both proposals of payment (on 16 September 2020 and 1 October 2020), Watford believed that it would be able to meet its obligations. The reality was every time different. All the more, the second lockdown was introduced in England, so Watford experienced lack of income again. This is why Mr Pozzo asked Mr Bayat to find an amicable solution with Stade Rennais.

Mr Pozzo affirmed that Watford accepted the provision of Article 6 para. 2 of the Agreement knowing that it was abusive because Stade Rennais requested to include it and Watford never is in breach of its payment obligations, but then the pandemic unexpectedly came and Stade Rennais used this clause to gain economic advantage. Mr Pozzo underlined that apart from Stade Rennais, all other partners and third parties accepted late payments from Watford in this period.

85. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

## IV. SUBMISSIONS OF THE PARTIES

86. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every argument advanced by the Parties. The Panel has nonetheless carefully considered all the claims made by the Parties, whether or not there is a specific reference to them in the following summary.

### A. The Appellant's submissions

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

88. The Appellant states that its appeal seeks to challenge the nature of Article 6 para. 2 of the Agreement, its enforceability, the interest awarded by the FIFA PSC to the Respondent on the amounts of EUR 76,666 and EUR 7,676,666.67 at the rate of 18% *p.a.* as well as the dates of effective payment of the outstanding amounts set in the Appealed Decision. However, the Appellant does not challenge that it had owed at the time to the Appellant the amount of EUR 8,230,832.67 (the Principal).

89. The Appellant states that it has fully settled its payment obligations towards the Respondent by effectively paying Stade Rennais the total amount of the Principal as well as a default interest at the rate of 5% *p.a.* paid *ad cautelam*.

90. The Appellant first asserts that Article 6 para. 2 of the Agreement was construed as a penalty clause and not as contractually agreed interest in case of default. In the Appellant's view, said provision of the Agreement fully complies with the requirements of a contractual penalty clause under Swiss law, i.e. it has a repressive function and is autonomous, but at the same time accessory and conditional upon a clearly identifiable principal obligation.

91. The Appellant further claims that the penalty clause established in Article 6 para. 2 of the Agreement is non-enforceable due to a *force majeure* event related to the COVID-19 pandemic, further exacerbated by the relegation of the Appellant to the English Football League Championship (the "EFLC").

92. In this respect, the Appellant states that performance of its payment obligations under the Agreement became temporarily impossible as a result of the COVID-19 pandemic and specifically its economic, financial and sectorial impact on the Appellant's situation.

93. In particular, the Appellant asserts that it suffered certain liquidity shortfalls, mainly in terms of matchday, commercial and broadcasting revenues. The Appellant further alleges that it was prevented from implementing its Plan B to compensate the immediate liquidity shortages as a result of introduction of specific COVID-19-related measures and restrictions within the football industry. Finally, the Appellant claims that it was impacted by the fundamental changes in the football sector and competitions, particularly the postponement by the FA of the transfer windows. In this respect, Watford asserts that postponement of the transfer windows due to the pandemic led to a disconnection of the payment dates and the closing dates of transfer windows. As a result, Watford had significantly less time to find a solution to compensate its immediate liquidity shortages in order to meet its payment obligations under the Agreement.

94. The Appellant states that the COVID-19 pandemic and its negative repercussions constitute an objective impediment and an event beyond the control of Watford. Furthermore, the temporary impossibility to meet its payment obligations was unforeseeable and could not have been reasonably expected at the time of conclusion of the Agreement. Therefore, according to the Appellant, the foregoing event meets all criteria required by CAS jurisprudence and Swiss law to be characterized as *force majeure*.

95. The Appellant further claims that it has acted diligently, with due care and consistently with its compromised situation, e.g. refraining from acquiring any new players against payment and trying to sell some of its best players to create short-term liquidity.

96. Finally, the Appellant asserts that its situation of financial hardship was further aggravated by its relegation to the EFLC at the end of the 2019/2020 football season.

97. As a result, it is a view of the Appellant that the penalty clause established in Article 6 para. 2 of the Agreement shall not be enforceable pursuant to Articles 163(2) and 103(2) of the Swiss Code of Obligations (the "SCO"). Furthermore, no default interest shall be imposed on the outstanding amounts and consequently the Respondent shall reimburse the Appellant for the interest in the amount of EUR 298,491.77 already paid *ad cautelam*.

98. Alternatively, the Appellant claims that the non-enforceability of the penalty clause established in Article 6 para. 2 of the Agreement results from application of the principle *rebus sic stantibus*.

99. The Appellant submits that all conditions developed by the Swiss Federal Tribunal (the "SFT") for the applicability of the foregoing principle have been met. Accordingly, the Appellant asserts that the impact of the COVID-19 pandemic caused by football anomalies constitutes a change in Watford's circumstances that have led to a fundamental distortion of the Agreement and to a significant disparity between the Parties' obligations insofar as they impose any penalization on the Appellant.

100. The Appellant further asserts that such change in circumstances could not be reasonably foreseeable, was not caused by Watford and that it did not, and could not be expected to, accept the risk of such fundamental change at the time of concluding the Agreement.

101. As a result, the Appellant states that application of the principle *rebus sic stantibus* in the present case entails the non-enforceability of Article 6 para. 2 of the Agreement pursuant to Article 163(2) of the SCO. *In lieu* of the penalty stipulated in the abovementioned provision, solely a default interest at a maximum rate of 5% *p.a.* shall be accrued on the outstanding amounts. Such default interest has already been paid by the Appellant *ad cautelam*.

102. Subsidiarily, the Appellant claims that the penalty envisaged in Article 6 para. 2 of the Agreement shall be further reduced pursuant to Article 163(3) of the SCO.

103. In this respect, the Appellant similarly asserts that all criteria developed in the CAS and SFT jurisprudence for a penalty to be considered excessive have been met. In particular, the Appellant claims that the Respondent's interest in Watford's compliance with its obligations was not preponderant, as Watford warned Stade Rennais in advance of its difficulties. Default of the Appellant in the delay in performance of its obligations is not severe, as the outstanding amounts represent less than a quarter of the guaranteed sums due under the Agreement and were paid as soon as Watford was able to do so. The Appellant further submits that its failure was not intentional but was caused by factors entirely beyond its control. While both Parties generally have considerable experience in football business, the impact of COVID-19 on football is unprecedented, thus Watford's experience must be seen in this light. Finally, the Appellant asserts that it proved to be in a perilous financial situation and that its economic situation was at risk.

104. Consequently and taking into consideration CAS jurisprudence on the matter, in the Appellant's view the penalty reduced pursuant to Article 163(3) of the SCO shall amount to a maximum rate of 5% *p.a.* inclusive interest. Such interest has equally been already paid by the Appellant *ad cautelam*.

105. In its Reply, the Appellant reiterated and clarified its position summarized above.

106. The Appellant's Requests for Relief contained in the Appeal Brief are as follows:

*"1. To deem admissible and uphold in its entirety the Appeal filed by WFC; and*

*2. To set aside the Appealed Decision; and*

*3. To <u>issue a new decision</u> which replaces the decision challenged, <u>declaring</u> that:*

*3.1. WFC's liability for a delay of performance a result of a force majeure event is excluded, <u>ordering</u> that:*

*i) <u>No penalty</u> (Article 163 II CO) and <u>no</u> default interest (Article 103 II CO) shall be imposed on WFC; and*

*ii) Consequently, <u>STADE RENNAIS FOOTBALL CLUB shall reimburse WFC</u> the amount of EUR 298,491.77.- corresponding to the 5% interest per annum paid on an ad cautelam basis.*

*<u>Alternatively and subsidiary to 3.1 above</u>:*

*3.2. The fundamental change in WFC's circumstances justified the application of the 'rebus sic stantibus' exception, and it shall therefore be ordered that:*

*i) No penalty shall be imposed on WFC (Article 163 II CO); and*

*ii) A default interest at a maximum rate of 5% per annum on the outstanding amounts (Art. 104 I CO) shall be imposed on WFC (i.e. EUR 298,491.77.-), which has already been paid on an ad cautelam basis as set out in paragraph 87, above.*

*Alternatively and subsidiary to 3.1 and 3.2 above:*

*3.3. WFC's delay in performance was not justified by circumstances beyond its control therefore it shall order that:*

*i) The Penalty provided for in Clause 6.2 of the Transfer Agreement as delimited by the FIFA PSC, shall be significantly reduced for being excessive, manifestly disproportionate and exorbitant (Article 163 III CO);*

*ii) Consequently, according to discretion and the Court's experience with due regard to WFC's case and extraordinary circumstance, WFC shall be imposed a maximum penalty of 5% per annum on the outstanding amounts (inclusive of interest) (i.e. EUR 298,491.77.-), which has already been paid on an ad cautelam basis as set out in paragraph 87, above.*

*4. To order STADE RENNAIS FOOTBALL CLUB:*

*4.1. To bear all the arbitration and administrative costs pertaining to these appeal proceedings before the CAS; and*

*4.2. To pay WFC a significant contribution towards its legal fees and other expenses incurred in connection with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R64(5) of the CAS Code."*

## B. The Respondent's submissions

107. The Respondent's submissions, in essence, may be summarised as follows.

108. The Respondent first states that Article 6 para. 2 of the Agreement was written and agreed by both parties as being a penalty clause.

109. The Respondent further asserts that it has duly warned the Appellant of its non-compliance with its obligations under the Agreement on 9 October 2020, thus fulfilling the requirement set out in Article 102 of the SCO.

110. Accordingly, the Respondent claims that the penalty clause is enforceable and that the Appealed Decision has already reduced it within the reasonable limits. Reduction of the penalty to 5% *p.a.* would far exceed the judge's reasonable power to review contractual arrangements on the basis of Article 163(3) of the SCO.

111. The Respondent submits that the criteria established in the SFT jurisprudence for a penalty clause to be considered excessive have not been met. According to the Respondent, Stade Rennais had a greater interest in securing timely payment of the Transfer Fee given its difficult financial situation and the fact that the Player was already permanently transferred to Watford. The Respondent claims that it built its whole budget depending on the various instalments that were supposed to be paid by the Appellant; thus Watford's behaviour had an impact on financial situation of Stade Rennais and other clubs. The Respondent further asserts that the severity of the Appellant's breach is high and the fact that Watford performed part of its obligation does not make such breach less severe. According to the Respondent, the Appellant's breach was intentional as it did not make any effort to respect its engagements despite the fact that its oldest debt was outstanding already for one year. Moreover, the business experience of the Appellant as a well-established football club in Europe and the fact that the penalty clause established in Article 6 para. 2 of the Agreement has previously been inserted in another transfer agreement concluded between the Parties make it unjustified to grant Watford further reduction. Finally, the Respondent refers to various data regarding transfers executed by the Appellant during the 2020 and 2021 summer transfer windows, and therefore contests the Appellant's allegations regarding its unsound financial situation caused by the COVID-19 pandemic.

112. The Respondent refers also to other criteria set out in the CAS jurisprudence for reduction of a contractual penalty and concludes that the penalty of 18% *p.a.* is fair, legitimate and proportionate, and therefore shall not be further reduced.

113. The Respondent further submits that the notion of *force majeure* shall not be applicable. It asserts that neither the COVID-19 pandemic nor the Appellant's relegation, nor the fact that both events occurred concurrently, constitute a *force majeure* event.

114. The Respondent notes in principle that FIFA did not declare the COVID-19 outbreak to be a *force majeure* situation in any specific country or territory. Rather, it is for the party invoking *force majeure* to prove that such event occurred in given circumstances. According to the Respondent, the Appellant did not demonstrate that the COVID-19 pandemic fulfilled all criteria necessary for it to be characterised as a *force majeure* event, nor did it demonstrate a causal link between the consequences of the pandemic and non-payment of its debts.

115. The Respondent relies on CAS jurisprudence in claiming that a *force majeure* event has to render the execution of obligations absolutely impossible. It further submits that the Appellant itself claimed that COVID-19 alone did not render execution of its financial obligations totally impossible. In particular, given that the first instalment of the Transfer Fee was due on 21 August 2019 and part of it became unpaid, it cannot be claimed that its non-payment was caused by a *force majeure* event since it occurred before the COVID-19 pandemic.

116. The Respondent submits that by continuing to pay salaries to its employees, by selling some players and by hiring new ones, the Appellant demonstrated that it had capacity to respect its financial obligations.

117. Similarly, the Respondent asserts that the Appellant's relegation is not a *force majeure* situation. In particular, the Respondent indicates that relegation is intrinsic to sport, results from sports performance and constitutes a well-known risk accepted by every football club. In this respect, the Respondent emphasizes that the Appellant was relegated 9 times since its establishment and that it spent some time in a relegated position in the 2019/2020 football season. Moreover, the Respondent refers to parachute payments granted from the English Football League to clubs that are relegated to the EFLC.

118. The Respondent further states that the concomitance of the COVID-19 pandemic and the relegation equally do not constitute a *force majeure* event. In particular, the Respondent notes that relegation costs invoked by the Appellant are almost 3 times higher than pandemic-related shortages. The Respondent therefore alleges that the Appellant used the pandemic as an excuse to justify non-fulfilment of its financial obligations.

119. The Respondent relies on CAS jurisprudence in claiming that the conditions for the occurrence of *force majeure* are to be narrowly interpreted and that financial difficulties in general cannot fall within this interpretation.

120. The Respondent also submits that the fact that the COVID-19 pandemic and relegation are not individually considered *force majeure* events also means that they cannot jointly constitute a *force majeure* situation.

121. The Respondent further asserts that the principle of *rebus sic stantibus* is equally non-applicable. According to the Respondent, the Appellant's interpretation of this principle is erroneous.

122. The Respondent notes that the *rebus sic stantibus* principle shall be applied restrictively, as it contradicts the principle of *pacta sunt servanda*, and can only be applied if the change in circumstances causes an exceptional, unforeseeable and unavoidable imbalance of benefits. The Appellant's relegation cannot be regarded as such change in circumstances as it is not a unique or exceptional situation for a football club. The Respondent refers to the Appellant's Appeal Brief and notes that neither the COVID-19 pandemic nor the relegation would alone entail application of the *rebus sic stantibus* principle. Therefore, they cannot be invoked as being components of a change in circumstances.

123. The Respondent further claims that since it has performed its part of the Agreement, the principle of *rebus sic stantibus* cannot apply.

124. In terms of the Parties' financial situation, the Respondent alleges that Stade Rennais was more affected by the financial consequences of the COVID-19 pandemic than the Appellant was. The Respondent asserts that in the present case there is in fact no imbalance between the performances of both Parties. Finally, the Respondent claims that the penalty clause under Article 6 para. 2 of the Agreement is not part of the financial compensation for Stade Rennais' service and thus the principle of *rebus sic stantibus* shall not be applicable to it.

125. In its Rejoinder, the Respondent fully reiterates its position, submits that it acted in good faith towards the Appellant and that temporality of non-compliance with the Appellant's

obligations does not influence the application of the penalty clause. The Respondent further maintains that the *force majeure* and *rebus sic stantibus* principles are not applicable in the present case.

126. The Respondent's Requests for Relief contained in the Rejoinder are as follows:

"*Based on the foregoing, the Respondent requests from the CAS Panel to take into account its Answer and the present Rejoinder in order to dismiss the Appeal filed by the Appellant.*

*Consequently, the Respondent requests from the CAS Panel to:*

- *Uphold the decision taken by the FIFA Players 'Status Committee on 20 April 2021.*
- *Order the Appellant to bear all arbitration costs.*
- *Order the Appellant to pay to the Respondent a contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 35,000 (thirty-five thousand Euros)."*

## V. JURISDICTION

127. Article R47 of the CAS Code provides in its relevant part as follows:

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

128. Article 57 para. 1 of the FIFA Statutes (May 2021 edition) provides as follows:

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

129. The jurisdiction of CAS derives from Article 57 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by the Respondent and is confirmed by the Order of Procedure duly signed by the Parties.

130. Therefore, the Panel finds that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

131. Article R49 of the CAS Code in its relevant part provides as follows:

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

132. Article 57 para. 1 of the FIFA Statutes quoted above provides for a time limit to lodge an appeal against a decision of the FIFA PSC of 21 days as of receipt of the decision in question.

133. The reasons of the Appealed Decision were notified to the Appellant on 18 June 2021. The Appellant filed its Statement of Appeal on 9 July 2021.

134. The Statement of Appeal thus complied with the requirements set out in Article R48 of the CAS Code.

135. Furthermore, the Appeal Brief was filed on 16 August 2021, in accordance with the extension of the time limit granted to the Appellant on the basis of Article R32(2) of the CAS Code.

136. The Panel thus concludes that the appeal is admissible.

## VII. APPLICABLE LAW

137. Article R58 of the CAS Code states as follows:

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

138. Article 56 para. 2 of the FIFA Statutes provides as follows:

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

139. Article 23 para. 1 of the Agreement in its relevant part provides as follows:

*"This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the FIFA Regulations and the laws of Switzerland."*

140. Furthermore, the Panel notes that in their submissions, both Parties widely rely on regulations and documents issued by FIFA, as well as on the provisions of Swiss law.

141. Taking into consideration the foregoing, the Panel shall decide the present dispute primarily according to the relevant FIFA regulations, and Swiss law shall be applied subsidiarily.

## VIII. MERITS

142. The Panel has identified the following main issues to be resolved in the present proceedings, which will be addressed consecutively:

a) Does Article 6 para. 2 of the Agreement contain a penalty clause or a contractually agreed default interest?

b) Do the events invoked by the Appellant qualify as *force majeure*, rendering Article 6 para. 2 of the Agreement inapplicable?

c) Do the events invoked by the Appellant justify application of the principle *rebus sic stantibus*, rendering Article 6 para. 2 of the Agreement inapplicable and instead justifying application of the 5% default interest?

d) Should the amount due under Article 6 para. 2 of the Agreement be further reduced pursuant to Article 163(2) of the SCO?

**a) Does Article 6 para. 2 of the Agreement contain a penalty clause or a contractually agreed default interest?**

143. It remains undisputed between the Parties that Article 6 para. 2 of the Agreement constitutes a penalty clause. However, in the Appealed Decision, the FIFA PSC qualified the abovementioned provision as *"the interest contractually agreed between the parties"* (para. 19 of the Appealed Decision) and reduced its amount in accordance with said qualification.

144. It is recalled that Article 6 para. 2 of the Agreement provides that:

> *"6.2. Should WATFORD fail to carry out the undertakings mentioned above within the required times, the parties expressly agree that WATFORD will pay the Seller a sum equal to 5% of the total amount of the transfer fee mentioned above for each full month of delay, as a lump sum payment for damages and interest, without any need for prior notification. In general, if there are any difficulties in payment, the expenses for recovery of the debt, of whatever nature, will be at the expense of WATFORD."*

145. The Panel shares the Parties' view that Article 6 para. 2 of the Agreement contains a penalty clause and not an "*interest contractually agreed*" as referred to in the Appealed Decision, for the reasons set out below.

146. The Panel notes that the FIFA regulations do not provide any indication in this respect. It is therefore necessary to apply relevant provisions of Swiss law and related jurisprudence.

147. The right of the parties to agree on default interest rate results from Article 73(1) of the SCO, which provides that:

> *"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum."* (emphasis added)

148. Furthermore, Article 160(1) and (2) of the SCO stipulates the possibility to include a penalty clause in a contract. Accordingly:

*"1 Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.*

*2 Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation."*

149. The penalty clause may be considered exclusive when the creditor must choose between the performance or the penalty (Article 160(1) of the SCO) or cumulative when the creditor may claim penalty in addition to the performance of the main obligation (Article 160(2) of the SCO) (cf. *inter alia* CAS 2018/A/6071, para. 85).

150. It is widely recognized in CAS jurisprudence that there is an essential difference between penalty and interest. By way of example, the CAS award in case CAS 2019/A/6568 states as follows (para. 63):

"*Interest, on the one hand, only compensates the creditor for the debtor's late payment and the financial (interest) losses of the creditor as a result of depriving it from payments it is entitled to (CAS 2015/A/3909). Penalty clauses, on the other hand, are contractual provisions which parties can use to impose penalties on each other in the event that one of them breaches a contractual obligation. In fact, a penalty aims at putting pressure on the debtor in order to foster in terrorem compliance under threat of having to pay a penalty (Cf. MOOSER, op. cit., n. 2 ad art. 160 ("effet répressif" and "effet préventif" role of penalty)."*

151. While both penalty and interest aim to provide for a certain, previously agreed compensation to the creditor, the fundamental difference lies in the fact that a penalty fulfils also a preventive and repressive function. In principle, a clause shall be considered as a penalty if its amount is significant and exceeds the foreseeable compensation (COUCHEPIN G., La clause pénale, Etude générale de l'institution et de quelques applications pratiques en droit de la construction, Zürich, 2008, para. 1178). The agreement on a penalty in addition to a default interest is thus not excluded *per se* as these two institutions pursue different objectives (CAS 2013/A/3401, para. 61).

152. The Panel further notes that under Swiss law (Articles 160 *et seq.* of the SCO), Swiss doctrine (COUCHEPIN G., *La clause pénale*, para. 462) and the relevant CAS jurisprudence (e.g. CAS 2018/A/6071 para. 78; CAS 2015/A/4057 para. 83), a penalty clause shall contain the following necessary elements: a) the parties bound by the contractual penalty, b) the kind of penalty that has been determined, c) the conditions triggering the obligation to pay the contractual penalty, and d) the measure of the contractual penalty.

153. The Panel is of a view that the function of Article 6 para. 2 of the Agreement is not simply compensatory. Rather, its construction and in particular the agreed amount (5% of the total amount of the Transfer Fee per month, i.e. 60% per year) imply that the clause at hand is preventive and repressive in nature. Furthermore, it contains all foregoing

necessary elements of a penalty clause, i.e. indicate the parties bound by the penalty, the kind of the penalty and its measure as well as the conditions triggering payment of the penalty – failure to comply with an obligation within the specific time. Finally, on the basis of the Parties' submissions, the Panel concludes that it was in fact a common and real intent of the Parties to include a penalty clause in Article 6 para. 2 of the Agreement.

154. Taking into account the foregoing, the Panel considers that Article 6 para. 2 of the Agreement contains a penalty clause and that it is applicable cumulatively with the main obligation, i.e. payment of the Transfer Fee.

**b) Do the events invoked by the Appellant qualify as a *force majeure*, rendering Article 6 para. 2 of the Agreement inapplicable?**

155. Having established the nature of the provision under Article 6 para. 2 of the Agreement, the Panel now turns to the first issue raised by the Appellant, i.e. that the COVID-19 pandemic in conjunction with the Appellant's relegation constitute a *force majeure* event which temporarily prevented it from meeting its payment obligations towards the Respondent and rendered the penalty inapplicable. The Panel will analyze this in relation to the FIFA Regulations, as well as Swiss law and CAS jurisprudence.

- **FIFA Regulations**

156. The Panel notes that the FIFA Regulations, which are primarily applicable to the present dispute, do not contain any binding provisions on *force majeure*. Indeed, to some extent, FIFA addressed the issue of *force majeure* in its guidelines published after the outbreak of the COVID-19 pandemic. Accordingly, the Appellant relies on the fact that in its Circular No. 1714, FIFA provided that *"*[t]*he COVID-19 situation is, per se, a case of force majeure for FIFA and football".* However, the Panel notes that such guidelines did not declare the COVID-19 pandemic to be a *force majeure* event in general or in a specific country or territory.

157. Actually, the answer to the question of the FAQ in the FIFA Circular No. 1720 *"Did the Bureau of FIFA Council declare a 'force majeure' situation in any territory? Can this declaration be relied upon by MAs, clubs, or employees?"* expressly states that:

*"Article 27 of the RSTP allows the FIFA Council to decide "…matters not provided for and in cases of force majeure".*

*In this context, on 6 April 2020, the Bureau made several decisions regarding regulatory and legal issues as a result of COVID-19. In order to temporarily amend the RSTP, the Bureau relied upon article 27 as its source of power, determining that the COVID-19 outbreak was a matter not provided for and a force majeure situation for FIFA and football generally.*

*The Bureau did not determine that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure.*

*For clarity: clubs or employees cannot rely on the Bureau decision to assert a force majeure situation (or its equivalent).*

*Whether or not a force majeure situation (or its equivalent) exists in the country or territory of an MA* [Member Association] *is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement."* (emphasis in original)

158. The question of whether a party can rely on the foregoing FIFA guidelines when asserting its *force majeure* defence has already been answered in the negative in previous CAS awards (e.g. CAS 2020/A/7603, para. 63; CAS 2021/A/7816, para. 74).

159. Taking the above into consideration, the Panel is of a view that the Appellant cannot simply rely on the foregoing FIFA guidelines to establish that the COVID-19 pandemic constituted a *force majeure* event *in casu*.

- **Swiss Law and CAS Jurisprudence**

160. Notwithstanding the foregoing, the legal concept of *force majeure* is widely and internationally accepted and, in particular, is valid and applicable under Swiss law. Nonetheless, Swiss law does not contain an explicit regulation of *force majeure*. In particular, when considering the concept of *force majeure* in relation to a contractual penalty, one should look at the content of Article 163(2) of the SCO, which provides that:

*"The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor's control."* (emphasis added)

161. The Panel also notes that the Appellant has invoked, to sustain its position, Article 103(2) of the SCO, which provides in its relevant part that the obligor in default *"may discharge himself from liability* [for accidental damage] *by proving that his default occurred through no fault of his own"* (emphasis added).

162. Although Swiss law does not provide for a statutory definition of *force majeure*, this concept has been widely applied in previous CAS cases, giving rise to a well-established and consistent jurisprudence in this respect. For instance, the CAS award in case CAS 2018/A/5779 (para. 58), also quoted in case CAS 2020/A/7422 (para. 116), stipulate that:

*"As a general rule it could be said that, under some extraordinary and limited circumstances, a party who does not fulfil a contractual obligation could be excused for his breach if he can provide that the breach is due to the occurrence of an event of impediment that is not only beyond his control (and that he cannot avoid to get over) but also that he could not have been reasonably expected to have taken into account when he assumed the relevant obligation that was breached."*

163. Furthermore, for *force majeure* to exist, there must be *"an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible"*

(e.g. CAS 2013/A/3471, para. 49; CAS 2015/A/3909, para. 74; CAS 2021/A/7816, para. 67).

164. Importantly, the concept of *force majeure* shall be applied in a restrictive manner as it constitutes a fundamental departure from the principle of *pacta sunt servanda*. It is well reflected in CAS jurisprudence in which it has been stated that "*the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation*" (e.g. CAS 2006/A/1110, para. 17; CAS 2021/A/7673 & CAS 2021/A/7699, para. 86).

165. The Panel notes and agrees that, in principle, external economic factors do not constitute *per se* a justification for non-compliance with financial obligations assumed by a contracting party (e.g. CAS 2021/A/7799, para. 92). In this respect, the CAS award in case CAS 2018/A/5537 states that:

*"The alleged financial difficulties the Appellant faced because of the economic crisis in Egypt, and the consequential loss of value of the local currency, are not valid arguments in view of well-established CAS jurisprudence. Financial difficulties or the lack of financial means of a club cannot be invoked as justification for not complying with an obligation to pay (cf. CAS 2016/A/4402 par. 40; CAS 2014/A/3533, par. 59; CAS 2005/A/957, par. 24)."*

166. Finally, it shall be noted that in accordance with the principle of the burden of proof, each party to a legal procedure bears the burden of proving its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (see: IBARROLA J., La jurisprudence du TAS en matière de football – Questions de procedure et de droit de fond, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sport, Berne 2007, p. 252). This principle is enshrined in Article 12 para. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (June 2020 Edition), applicable in the proceedings before FIFA PSC, as well as in Article 8 of the Swiss Civil Code (the "SCC").

167. While it is appreciated that the outbreak of the COVID-19 pandemic was an unprecedented and unforeseeable event that considerably impacted the football industry, the Panel is not comfortably satisfied that the Appellant proved *in casu* having been prevented from performing its payment obligations towards the Respondent as a result of the pandemic. Firstly, in line with the CAS jurisprudence quoted above, it shall be noted that the Appellant's financial difficulties *per se* cannot be invoked as a justification for non-compliance with its contractual obligations. Furthermore, the Panel notes that the Appellant in fact failed to prove its allegations regarding its financial situation with any objective evidence. In this respect, the Panel finds that the mere declaration of Mr Emiliano Russo, the Chief Financial Officer of Watford, is insufficient to prove the financial losses of the Appellant and the unability to timely pay in the case at hand. Despite its declaration that an independent financial audit would be executed by the end of the year 2020 (point 5.3 of the Exhibit 14 to the Appeal Brief), the Appellant failed to provide the Panel with any independent expert report or other objective documentary evidence supporting its financial allegations. On the other hand, it does not stem from the Appellant's submissions that it was entirely prevented from performing all its financial obligations towards all partners, contractors and employees. Rather,

the Panel is satisfied that a delayed compliance with the Appellant's financial obligations towards the Respondent resulted in part from the applied financial strategy.

168. Similarly, the Panel finds that the Appellant did not meet its burden to establish that its delayed payment of the amounts due occurred *through no fault of its own*, as stated in Article 103(2) of the SCO. The Panel primarily notes that the first instalment of the Transfer Fee was due to be paid already in August 2019, i.e. before the outbreak of the COVID-19 pandemic. Nonetheless, part of the Appellant's payment obligation (EUR 76,666,66) was not fulfilled on time but was paid only on 3 December 2020, i.e. with a delay exceeding one year. Furthermore, this alleged lack of "*fault of its own*" does not seem very compatible with the Appellant's declarations that it would comply with its obligations towards the Respondent by the end of September 2020 and subsequently October 2020, as it appears from the relevant correspondence produced to the file, obligations with which the Appellant finally failed to timely comply.

169. Even assuming that performance of the Appellant's obligations towards the Respondent was impossible, a theory that in principle was not sufficiently proven, such impossibility would only be temporary. Although with a delay, Watford gradually complied with its financial obligations and ultimately paid the remaining amount of the Principal on 2 June 2021, and some days later Watford paid *ad cautelam* an additional amount of interest. In light of well-established CAS jurisprudence quoted above, temporary impossibility to fulfil one party's contractual obligations exclude the application of *force majeure*.

170. On the other hand, the relegation of the Appellant to the EFLC at the end of the 2019/2020 football season cannot be taken into consideration when assessing whether a *force majeure* event occurred. The relegation of a football club to a lower division of competitions is an unfortunate event but is inherent to the world of football. Consequently, it cannot be regarded as unexpected, unforeseeable and beyond control of the club in question. The possibility of relegation shall therefore always be taken into consideration by a club when construing its financial strategy. Therefore, the relegation of the Appellant to the EFLC cannot be considered as a *force majeure* event either separately or in conjunction with the COVID-19 pandemic.

171. Taking into consideration the foregoing, the Panel finds that the COVID-19 pandemic in conjunction with the Appellant's relegation do not qualify as a *force majeure* event and thus do not render the penalty under Article 6 para. 2 of the Agreement inapplicable.

**c) Do the events invoked by the Appellant justify application of the principle *rebus sic stantibus*, rendering Article 6 para. 2 of the Agreement inapplicable and instead justifying application of the 5% default interest?**

172. Alternatively, the Appellant asserts that the COVID-19 pandemic and its impact on the Appellant's situation, compounded by its relegation to the EFLC, constituted extraordinary circumstances beyond Watford's control, making the fulfilment of its financial obligations towards the Respondent temporarily extremely onerous, justifying application of the principle *rebus sic stantibus*. Thus, according to the Appellant, the penalty under Article 6 para. 2 of the Agreement shall not be applicable and instead the Panel shall impose a default interest of 5% *p.a.*, equal to the amount already paid by the Appellant *ad cautelam*.

173. The Panel deems it appropriate to note that the judge, in the event of a dispute, is bound by the contract validly entered into by the parties, even if the judge considers the result surprising or shocking (TERCIER P., PICHONNAZ P., Le droit des obligations, 6th ed. N° 1011, p. 236). According to the fundamental principle of contract law – *pacta sunt servanda* – the provisions of a contract must be respected.

174. Nevertheless, a contract may be amended by the judge when the circumstances under which it was concluded have changed to such an extent that the continuation of the contract cannot be required. However, such an intervention by the judge must remain an exception and it is acceptable upon the occurrence of specific requirements (ATF 101 II 17, consid. 1 b). This concept, also known as *clausula rebus sic stantibus*, arises from the general principles of fairness and good faith pursuant to Article 2 of the SCC (WINIGER B., Commentaire Romand 2nd ed., no 193 ad Art. 18 CO and references, p. 175, ATF 138 V 366, consid. 5.1).

175. Following the well-established CAS jurisprudence in this respect (e.g. CAS 2021/A/8113, para. 84; CAS 2021/A/7791, para. 51), the terms of a contract can be modified by the Panel upon occurrence of the following elements:

    a) the change in circumstances is subsequent to conclusion of the contract,

    b) the change in circumstances is of an unpredictable nature, and

    c) the change in circumstances is of a nature seriously disrupting the contractual balance.

176. At the same time, it shall be noted that the disruption of the contractual balance – i.e. between performance and counter performance – must reach a degree which constitutes a misuse if one party still insists on the performance under the contract (CAS 2021/A/8113, para. 85). The seriousness of the disruption requires that performance of the contractual obligation cannot be demanded in good faith (CAS 2021/A/7673 & CAS 2021/A/7699, para. 101 and cit.). The occurrence of the foregoing elements must equally be proven by a party deriving a right therefrom according to the above-mentioned principle of the burden of proof.

177. The Panel is inclined to accept that the outbreak of the COVID-19 pandemic and its ensuing financial consequences constituted in principle a change in circumstances that occurred after the conclusion of the Agreement. Similarly, the Panel has no difficulty in considering that such change in circumstances occurred unpredictably. However, the Panel finds that the Appellant failed to prove that this change in circumstances entailed *in casu* a disruption of the contractual balance that is necessary to establish in order to apply *clausula rebus sic stantibus* and its effects.

178. The sudden outbreak of the COVID-19 pandemic and its impact on the financial viability of football clubs does not in itself preclude the Respondent's legitimate interest in receiving a penalty in case of a delayed payment of the part of the Transfer Fee that became due and payable. Nor do the foregoing circumstances render this percentage of 5% abusive or disproportionate. It shall be noted that the Respondent's obligation under

the Agreement – i.e. the transfer of the Player – has been complied with in full in a timely manner. In addition, the Panel notes that part (even if a minor part) of the Appellant's non-compliance with its obligations already concerned the first instalment of the Transfer Fee which was due in 2019 before the outbreak of the pandemic, thus before the alleged foregoing change in circumstances. Moreover, the Panel is comfortably satisfied that the economic consequences of the COVID-19 pandemic reached both Parties, not only the Appellant. Therefore, and taking into consideration the fact that the principal obligation of the Appellant – i.e. payment of the relevant instalments of the due and payable part of the Transfer Fee – has ultimately been complied with, the Panel does not see any sudden contractual imbalance that needs to be re-balanced by finding the contractual penalty inapplicable in its entirety.

179. As far as the Appellant's relegation is concerned, the Panel fully reiterates its position expressed in the previous section, according to which relegation of a football club cannot be regarded as an unforeseeable or unpredictable event. Thus, this circumstance equally cannot amount to application of *clausula rebus sic stantibus*, either separately or in conjunction with the COVID-19 pandemic.

180. In consideration of all the above, the Panel recalls that modification of contractual terms under the *rebus sic stantibus* principle is an exceptional institution that can only be applied when all the foregoing requirements are clearly met. The Panel is of a view that the Appellant failed to discharge its burden of proof in this respect and thus the principle of *rebus sic stantibus* shall not apply.

**d) Should the amount due under Article 6 para. 2 of the Agreement be further reduced pursuant to Article 163(2) of the SCO?**

181. Subsidiarily, should the concept of *force majeure* and the principle of *rebus sic stantibus* not be applied by the Panel, the Appellant asserts that the penalty under Article 6 para. 2 of the Agreement, reduced by the FIFA PSC to 18% *p.a.* (as interest payments), is still manifestly exorbitant and thus should be further reduced to a maximum rate of 5% *per annum*.

182. The Panel notes that the FIFA regulations do not contain any provisions on reduction of penalty clauses. Therefore, recourse shall be made to Article 163(3) of the SCO, according to which:

*"At its discretion, the court may reduce penalties that it considers excessive."*

183. As a preliminary remark, it shall be noted that under the fundamental principle of *pacta sunt servanda* enshrined in Article 163(1) of the SCO, parties to a contract are in principle free to determine the amount of contractual penalty. Only if the agreed amount of penalty is excessive can the court interfere in contractual provisions.

184. Swiss law does not provide for a definition of an excessive penalty, leaving it up to the court to assess, on a case-by-case basis, whether a penalty is excessive and, in the affirmative, to what extent it should be reduced. Indications as to what should be considered as excessive are to be found in the relevant CAS and Swiss jurisprudence. Accordingly, the judge (or the arbitrator) shall use his/her discretion to reduce

a contractual penalty if the relationship between the amount of the penalty agreed upon, on the one hand, and the interest of the creditor worthy of protection, on the other hand, is grossly disproportionate (ATF 114 II 264 et seq.). In other words, an excessive penalty under Swiss law is a penalty that, at the time of the judgment, is unreasonable and clearly exceeds the admissible amount in consideration of justice and equity (ATF 82 II 142).

185. As provided in Swiss doctrine, *"an important characteristic of excessive penalties is that disproportion must significantly exceed the limits of what seems to be normal in light of the circumstances. Therefore, there must be a significant disproportion between the amount agreed and the interest of the creditor to maintain the entire claim. The disproportion must be measured at the moment when the non-respect of the contractual provision took place*" (MAVROMATI D., Excessive contractual penalties in football, SSRN, 21 November 2016).

186. The Panel notes that it is well established in CAS jurisprudence that "*a penalty is not excessive merely because it exceeds the amount of damages which might be sought by the creditor. And if the purpose of the penalty is essentially preventive and not only punitive or compensatory, the penalty amount may be greater than the damages which might be judicially awarded (see CAS 2014/A/3858, paras. 86-88 for further references with regard to the paragraphs above)*" (CAS 2018/A/6071, para. 92).

187. The Panel further observes that CAS and Swiss case law provide for certain specific criteria to be taken into consideration when assessing whether a contractual penalty is excessive. In the present case, the Panel finds illustrative the following set of criteria established *inter alia* in CAS awards CAS 2021/A/7673 & CAS 2021/A/7699 (para. 121) and CAS 2010/A/2317 & CAS 2011/A/2323 (para. 28):

*"the creditor's interest (ATF 103 II 129 = JdT 1978 I 159), the seriousness of the breach of the contract (ATF 91 II 372, consid. 11 = JdT 1966 I 322) and the debtor's fault (ibidem), along with financial situation (ibidem) of both parties*".

188. Finally, the Panel is of a view that a court (or in this case the arbitrators) shall reduce the penalty only to a point in which such a penalty is no longer excessive in light of the circumstances of a given case.

189. Transposing the foregoing reasoning to the present case, the Panel notes that the fact that the penalty initially established in Article 6 para. 2 of the Agreement is excessive is not disputed between the Parties. In this respect, the Panel observes that the Respondent did not appeal the Appealed Decision, the result of which was a reduction of the contractually agreed penalty.

190. The FIFA PSC found the provision of Article 6 para. 2 of the Agreement excessive but considered it to be "*the interest contractually agreed between the parties"* and thus decided to reduce it from 5% each month on the total amount of the transfer fee to 18% total a year (*p.a.*) "*in accordance with the well-established jurisprudence of the PSC for comparable matters*". The FIFA PSC therefore in practice reduced the penalty to some extent but, in the view of the Panel, did not take into consideration several case-specific elements that should ultimately lead to a further reduction of the penalty *in casu*.

191. Firstly, the Panel notes that the FIFA PSC disregarded the fact that the breach of the Appellant's contractual obligations towards the Respondent occurred during the COVID-19 pandemic. In fact, the FIFA PSC applied a "standard" reduction that it would have generally applied before the pandemic in accordance with its own jurisprudence to a breach that took place in an unexpected, unforeseeable and difficult situation that severely affected the football industry worldwide. As emphasised by the Panel, the COVID-19 pandemic cannot *in casu* constitute a *force majeure* event, nor can it justify application of the *rebus sic stantibus* principle. However, the fact that the breach occurred during the pandemic should be taken into consideration – when the specific circumstances of a specific case so justify – when deciding on the extent of the reduction of the penalty.

192. The Panel thus finds it necessary to assess the specific circumstances of the present dispute in light of the abovementioned criteria for reduction of the penalty in order to establish the definitive amount of the penalty due from Watford to Stade Rennais.

193. Accordingly, as regards the interest of the creditor in the execution of the contractual obligations, the Panel is comfortably satisfied that:

- The interest of Stade Rennais worthy of protection was ultimately not put at a particularly high risk, considering the fact that:
  - the first instalment of the Transfer Fee was paid in its most part in a timely manner,
  - the second instalment of the Transfer Fee was ultimately paid in full,
  - payment of the third instalment of the Transfer Fee, which became due and payable while these proceedings were ongoing, is not disputed,
  - despite the ongoing dispute, Watford paid Stade Rennais an additional amount of EUR 298,491.77 towards the amount due (whether qualified as interest as it was (incorrectly) by FIFA or as a penalty as determined by the Panel) on an *ad cautelam* basis.
- The Respondent did not demonstrate having a particular or specific interest worthy of protection that is different from the general interest that any creditor has in receiving the amounts due in a timely manner. In this respect, the Panel notes that Stade Rennais did not establish that it suffered any extraordinary damage due to the late payment of the part of the Transfer Fee by Watford beyond a regular damage that occurs every time a delayed payment takes place. In particular, Stade Rennais did not prove not being able to honour its commitments towards third parties as a result of Watford's breach, or suffering any other specific kind of damage following such breach.
- The Parties have in fact concluded other football transactions in the past and no incidents of delayed payments on the side of Watford related to such transactions have been asserted in the present proceedings.

194. With regard to the seriousness of the breach of contractual obligations, the Panel is of a view that:

- The contractual breach on the side of the Appellant indeed occurred indisputably. However, the Appellant tried to mitigate the Respondent's damages resulting from such breach by executing several payments during the FIFA PSC proceedings, and ultimately paid the total Principal before receiving the grounds of the Appealed Decision. Watford further tried to mitigate Stade Rennais' damages by paying *ad cautelam* the amount corresponding to 5% *p.a.* accrued on the amounts due.

- At the time of lodging the claim before the FIFA PSC, the time that the second instalment of the Transfer Fee, which constituted a significant portion of the Principal, was overdue was not exponentially long. Furthermore, the claim was filed by the Respondent before the lapse of the payment date declared by the Appellant in its 21 October 2020 correspondence.

195. In terms of the degree of the debtor's fault, the Panel finds that:

- It cannot be concluded that the Appellant's fault was intentional. It should indeed be taken into consideration that the major breach of the Appellant's obligations occurred during the worldwide pandemic in combination with the Appellant's relegation to the EFLC. In addition, Stade Rennais' allegations regarding Watford's intentional breach cannot be sustained in light of the fact that the total amount of the Principal was paid by Watford during the ongoing FIFA PSC proceedings, even before receiving the grounds of the Appealed Decision. On top of that, the Appellant was proactive in mitigating the Respondent's damages by paying the amount corresponding to 5% *p.a.* of the due amounts *ad cautelam*.

- Watford, well before the second installment payment's maturity date, informed Stade Rennais of the difficulties in meeting its obligations with respect to such instalment and proposed amending the payment dates. In other words, the Appellant was proactive in trying to find solutions to the forthcoming breach of its contractual obligations with respect to the second instalment of the Transfer Fee even before this breach materialized.

- For its part, while the COVID-19 pandemic was developing and the football industry tried to adapt to dynamically changing situations, Stade Rennais has shown a rather inflexible attitude and did not accept the postponements of payment proposed by Watford. In this respect, the Panel notes that the Respondent stated that it had budgeted its own financial obligations on the assumption that it would timely receive the payments from Watford; however this argument was not corroborated with any evidence to satisfy the Panel that this was indeed the reason for not applying a certain amount of flexibility considering the circumstances and the efforts made by the Appellant.

- Payment of the third instalment of the Transfer Fee (which became due and payable by 31 August 2021) is not disputed by Stade Rennais, which additionally demonstrates the Appellant's willingness to comply with its contractual obligations.

196. Finally, with regard to the financial situation of the Parties, the Panel notes that:

- Both Parties were certainly impacted by the COVID-19 outbreak in terms of financial and economic stability, but neither the Appellant nor the Respondent demonstrated to what extent it suffered such impact.

- In view of the foregoing, what shall be taken into account is the proportion between the damages caused by the Watford's breach and the amount of the penalty imposed in the Appealed Decision. In this respect, the Panel is of a view that a penalty effectively amounting to over one million Euros as calculated by the Respondent for the Appellant's delay in payment occurring in the foregoing circumstances appears to be disproportionate in the present circumstances.

197. Taking into consideration the foregoing, the Panel considers that the penalty due from the Appellant to the Respondent shall be further equitably reduced.

**e) The amount of the penalty**

198. In accordance with the Appealed Decision, 18% interest *p.a.* shall accrue on the overdue parts of the Transfer Fee (EUR 76,666 and EUR 7,676,666.67, respectively) and 5% interest *p.a.* shall accrue on the Contingent Payment (EUR 477,500). The Appealed Decision also stipulates the periods of accrual of such "interest" (penalties in the Panel's view, as explained above) on the overdue parts of the Transfer Fee and the Contingent Payment. These accrual periods have not been specifically contested by the Parties.

199. The Appellant asserts that the penalty shall be reduced to a maximum rate of 5% *p.a.*, i.e. effectively to the maximum amount of EUR 298,491.77 already paid by the Appellant to the Respondent *ad cautelam*.

200. Taking into consideration the foregoing and specifically the considerations made in section VIII, lit d) of this award, the Panel considers that the penalty due from the Appellant to the Respondent shall be reduced, however not to the extent requested by the Appellant. The Panel appreciates that the analysis of the circumstances of the present case in light of criteria for reduction of a contractual penalty set out in CAS and Swiss jurisprudence speak in favour of further reduction of the penalty *in casu*. Nevertheless, some of these circumstances, in particular some aspects of Watford's behaviour, do not allow the Panel to accept the Appellant's subsidiary request for relief in full. In this respect, it does not escape the Panel's attention that the residual part of the first instalment of the Transfer Fee (EUR 76,666) was overdue since August 2019 (that is to say, well before the pandemic started). Furthermore, despite Watford's several declarations regarding dates of definitive payment of the Principal in September 2020 and October 2020, the Appellant did not comply with any of these declared dates. Lastly, the Panel notes that Watford subsequently failed to pay the Respondent the corresponding amount of solidarity contribution and did so only after the commencement of the relevant proceedings before FIFA.

201. Given these circumstances, the Panel has decided to reduce the penalty on the overdue parts of the Transfer Fee from 18% *p.a.* to 10% *p.a.* As mentioned above, the accrual

periods of such penalty on the overdue parts of the Transfer Fee have not been specifically contested by the Parties, so those established in the Appealed Decision are confirmed.

202. For the avoidance of doubt, the 5% p.a. penalty (not interest) on the Contingent Payment established in point 2 of the Appealed Decision is confirmed.

203. In the Panel's view, such penalty on the one hand is not excessive as per Article 163(3) of the SCO and on the other hand fairly and equitably corresponds to specific circumstances of the case. As EUR 298,491.77 have been already paid by the Appellant to the Respondent on an *ad cautelam* basis, this amount will have to be deducted from the penalty to be paid by the Appellant to the Respondent.

## IX. CONCLUSIONS

204. For the reasons set out above, the Panel comes to the conclusions that:

- Article 6 para. 2 of the Agreement is a penalty clause, not a contractually agreed interest rate in case of default.

- The events invoked by the Appellant (i.e. the COVID-19 pandemic in conjunction with the Appellant's relegation) do not qualify as *force majeure* and thus do not render the penalty under Article 6 para. 2 of the Agreement inapplicable.

- The events invoked by the Appellant (i.e. the COVID-19 pandemic in conjunction with the Appellant's relegation) similarly do not justify application of the principle of *rebus sic stantibus* and thus do not render the penalty under Article 6 para. 2 of the Agreement inapplicable on this basis.

- The penalty arising out of the Appealed Decision is excessive. The 18% *p.a.* on the overdue parts of the Transfer Fee shall be further reduced to 10% *p.a*.

- Part of the due penalty in the amount of EUR 298,491.77 has already been paid by the Appellant, so this amount will have to be deducted from the penalty to be paid by the Appellant to the Respondent by virtue of this award.

- Given that the Principal was also paid by Watford after the issuance of the operative part of the Appealed Decision and even before the present CAS proceeding started, the amount of Principal shall be also deducted from the amounts payable by Watford pursuant to point 2 of the operative part of the Appealed Decision as modified in this award.

205. All other requests and prayers for relief are dismissed.

## X. COSTS

(…).

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# ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Watford Association Football Club Limited against the decision issued on 20 April 2021 by the Single Judge of the FIFA Players' Status Committee (Ref. No. 20-01567) is partially upheld.

2. The decision issued on 20 April 2021 by the Single Judge of the FIFA Players' Status Committee is confirmed, save for point 2 of the decision which is amended as follows:

   *"The Respondent, Watford FC, has to pay to the Claimant, the following amounts:*

   - *10% interest p.a. over the amount of EUR 76,666 as from 21 August 2020 until 11 December 2020;*

   - *EUR 477,500 plus 5% interest p.a. as from 22 August 2020 until the date of effective payment;*

   - *EUR 7,676,666.67 plus 10% interest p.a. as from 1 September 2020 until the date of effective payment".*

3. The amounts already paid by Watford Association Football Club Limited to Stade Rennais Football Club (the Principal as well as the EUR 298,491.77 interest paid by Watford Association Football Club Limited on an *ad cautelam* basis) shall be deducted from the payments to be made to Stade Rennais Football Club pursuant to point 2 of this award.

4. (…).

5. (…).

6. All other prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 August 2023

# THE COURT OF ARBITRATION FOR SPORT

Jacopo Tognon
President of the Panel

Jordi López Batet
Arbitrator

Efraim Barak
Arbitrator