

Decision
of the
**Deputy Chairman of the FIFA Disciplinary
Committee**

Mr Alejandro Piera [PAR]

on 25 September 2019,

to discuss the case of:
Club Hapoel Tel Aviv FC, Israel
(Decision 180683 PST)

regarding:

failure to comply with
art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

I. inferred from the file

1. On 6 March 2018, the Single Judge of the Players' Status Committee decided that the club Hapoel Tel Aviv FC (hereinafter: *the Debtor*) had to pay to the club FC Bate Borisov (hereinafter: *the Creditor*):

EUR 100,000 within 30 days of notification of the decision plus 18% interest *p.a.* as of 28 December 2016 until the date of effective payment.

2. The terms of the decision of the Single Judge of the Players' Status Committee were duly communicated, amongst others, to the parties on 21 March 2018. No request for the grounds of the decision was received and, therefore, the decision from the Single Judge of the Players' Status Committee dated 6 March 2018 became final and binding.
3. As the aforementioned amount was not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 5 September 2019 for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the Debtor was informed that the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 19 September 2019, and was invited to provide its position within six days of receipt of the notification of the opening of disciplinary proceedings.
4. On 10 September 2019, the Debtor provided its position to the Secretariat, which can be summarized as follows:
 - There is no legal entity called Hapoel Tel Aviv. Actually, Hapoel Tel Aviv is a veteran football club that since the 1990's has been managed and operated by limited companies, amongst which Harel Holdings between the years 2007 and 2016;
 - Harel Holdings was declared in bankruptcy, which is still ongoing, and a liquidation order for the insolvency proceedings was issued against it by the Tel Aviv District Court on 4 January 2017;
 - subsequent to the issuance of the bankruptcy order, a new company (hereinafter: *the Nissanov Group*) purchased the club's management rights an ownership;
 - however, according to Israeli Companies Law which governs the insolvency proceedings of Harel Holdings, the rights transferred to and purchased by the new company were clear of any other debt, given

that all the debts that were created before the date of the issuing of the Liquidation Order as part of the bankruptcy proceedings remain as debts of the legal entity which is under bankruptcy;

- moreover, one of the duties of the liquidators is to try and collect any possible amounts owed to the entity under bankruptcy or to sell assets of the legal entity under bankruptcy, and distribute them between the different creditors based on the rules for the distribution of such funds;
- in this regard, the District Court of Jaffa-Tel Aviv clarified that according to Israeli Law the status of foreign creditors, such as the creditor in the subject case, is equal to any other creditor and there is no possibility of giving them preference over national creditors;
- in light of the foregoing, Harel Holdings admits that money is still owed to FC Bate Borisov and it is highly probable that it will receive payments from the liquidators, but the Belarusian club cannot enforce the debts against the football club Hapoel Tel Aviv nor against the new entity which owns and manages the club;
- moreover, FIFA does not have jurisdiction to circumvent Israeli courts and enforce payments of debts to a club when said debts are subject of national liquidation proceedings;
- furthermore, the FIFA Disciplinary Regulations are in line with the aforementioned statement when stating in art. 107 par. B that disciplinary proceedings should not be initiated against a club facing insolvency proceedings.

II. and considered

1. In the case at hand, in view of the arguments raised by the Debtor, the Deputy Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as *the Deputy Chairman of the Committee*) decides to first assess as to whether he is competent to decide on the present matter, and should it be the case, as to whether the club Hapoel Tel Aviv under the current management of the Nissanov Group (hereinafter: *the new Club*) could be held liable and responsible for a potential failure to respect the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018.

A) Applicable law

2. First of all, the Deputy Chairman of the Committee would like to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Deputy Chairman of the Committee underlines that the 2019 edition of the FDC (hereinafter: *the 2019 FDC*) entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
4. With regard to the matter at hand, the Deputy Chairman of the Committee highlights that the disciplinary offense, i.e. the potential failure to comply with the Single Judge of the Players' Status Committee decision, was committed before the 2019 FDC entered into force. As a result, the Deputy Chairman of the Committee deemed that the merits of the present case fall under the 2017 edition of the FDC (hereinafter: *the 2017 FDC*).
5. Notwithstanding the above, the Deputy Chairman of the Committee held that the procedural aspects of the present matter are governed by the 2019 FDC.

B) Jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

6. In view of the circumstances of the case, the Deputy Chairman of the Committee will now analyse as to whether he is competent to assess if the club Hapoel Tel Aviv FC currently under the management of the Nissanov Group is the successor of the Debtor, the club Hapoel Tel Aviv FC under the management of Harel Holdings.
7. For the sake of good order, it is worth emphasising that, in line with art. 54 par. 1 lit h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC (former art. 64 of the 2017 FDC) may be decided by one member of the Disciplinary Committee alone, i.e. the Deputy Chairman of the Committee in the case at hand.
8. In this context, the Deputy Chairman of the Committee first emphasises that it is uncontested that the club Hapoel Tel Aviv FC subject of the decision of the Single Judge of the Players' Status Committee has not been disaffiliated from the Israel Football Association nor has it ceased to

compete, but it is only the entity owning and managing the club that has changed.

9. In these circumstances, the Deputy Chairman of the Committee wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as *the Committee*) may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
10. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as “indirect members” of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations as well as by all relevant decisions passed by the FIFA bodies.
11. The aforementioned principle is embedded in article 14 par. 1 lit d) of the FIFA Statutes which requires the member associations “to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies” as well as in article 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, “shall take every precaution necessary to ensure their own members, players and officials comply with these decisions”. The foregoing is only possible to the extent that the so-called “members” are still affiliated to the member associations of FIFA.
12. Since the club Hapoel Tel Aviv FC has not been disaffiliated from the Israel Football Association, it has not lost its indirect membership to FIFA and therefore, the Disciplinary Committee can impose sanctions against it. However, the Deputy Chairman of the Committee notes that it is to be determined whether the club Hapoel Tel Aviv FC currently managed by the Nissanov Group is to be considered the sporting successor of the club originally managed by Harel Holdings.
13. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport, the Deputy Chairman of the Committee considers that he is not prevented from reviewing and/or making a legal assessment and deciding if the club Hapoel Tel Aviv FC currently managed by the Nissanov Group, is the same as – and/or the successor of – the club Hapoel Tel Aviv FC managed by Harel Holdings¹, especially considering that the club Hapoel Tel Aviv FC has not been disaffiliated and, as such, is under the jurisdiction of the Committee.
14. As a consequence, the Deputy Chairman of the Committee deems that he is competent to assess the present matter and therefore to pass a formal

¹ CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135

decision of a substantive nature on the liability of the club Hapoel Tel Aviv FC currently managed by the Nissanov Group towards the debts of the Debtor in the frame of art. 64 of the 2017 FDC.

C) The liability and responsibility of the club Hapoel Tel Aviv FC currently managed by the Nissanov Group

a. Whether the club Hapoel Tel Aviv FC currently managed by the Nissanov Group is liable for the debts incurred by the club Hapoel Tel Aviv FC managed by Harel Holdings

15. After having established that the Deputy Chairman of the Committee is competent to assess the present matter, he moves on to analyse whether the new Club has a connection with the original Debtor, and therefore can be held liable for the debts of the latter.
16. In this sense, the Deputy Chairman of the Committee found it worthwhile to recall the existing jurisprudence from CAS on this particular topic.
17. To that end, the Deputy Chairman of the Committee would first like to refer to the decisions that had dealt with the question of the succession of a sporting club in front of the CAS² and in front of FIFA's decision-making bodies³ which have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves (CAS 2013/A/3425).
18. In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, *i.e.* the "old" club, b) the "new" club took over the license or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another⁴. By the same token a "sporting succession" is the result of the fact that 1) a

² CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778

³ FIFA DRC 12150569

⁴ CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA

new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and 4) the “new” club took over the license or federative rights from the “old” club⁵.

19. Further⁶, the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities. *“A sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it”*. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.
20. For the sake of completeness, the Deputy Chairman of the Committee wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4, which states that *“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”*.
21. With the above in mind, the Deputy Chairman of the Committee subsequently analyses the circumstances of the case in the light of the criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.
22. In this sense, the Deputy Chairman of the Committee notes that, despite the change of management, the football club Hapoel Tel Aviv FC has kept all its characteristic elements unaltered (name, logo, colors, history, players, etc) and, most importantly, has maintained its affiliation to the Israel Football Association and has continued competing in the same category.
23. In light of all the above, the Deputy Chairman of the Committee recalls that, in line with the jurisprudence of CAS, which is now reflected in art. 15 par. 4 of the 2019 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, on the basis of the information and documentation at hand, there is no other alternative but to conclude that the club Hapoel Tel Aviv FC currently managed by the Nissanov Group is the

⁵ CAS 2011/A/2646 Club Rangers de Talca v. FIFA

⁶ CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

sporting successor of the Debtor, the club Hapoel Tel Aviv FC managed by Harel Holdings.

24. In this regard, the Deputy Chairman of the Committee notes that neither the original Debtor nor the new Club have complied with the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018, as neither club has paid the outstanding amounts to the Creditor.
25. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Deputy Chairman of the Committee concludes that, in principle, the sporting successor, *i.e.* the new Club, of a non-compliant party, *i.e.* the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2017 FDC.

b. Whether the club Hapoel Tel Aviv FC under the management of the Nissanov Group is responsible to pay the amounts imposed by the Single Judge of the Players' Status Committee

26. First and foremost, the Deputy Chairman of the Committee recalls that Harel Holdings, the entity managing the Debtor when its debts with the Creditor originated, went bankrupt. In this context, it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering its debt in order to assess as to whether a sanction can be imposed on the club currently managed by the Nissanov Group, *i.e.* whether the Creditor also contributed to create the breach of art. 64 of the 2017 FDC as it could be that its credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed⁷.
27. In this context, the Deputy Chairman of the Committee acknowledges that bankruptcy proceedings before national courts are complex, lengthy and differ from one country to another and that their outcomes are hardly predictable. However, the Deputy Chairman of the Committee deems it of paramount importance that the creditor seeking to recover his debt participates in the bankruptcy proceedings at national level.
28. In this regard, the Deputy Chairman of the Committee recalls that the equality of creditors is one of the general principles governing bankruptcy proceedings. In other words, similarly situated creditors should be treated similarly.
29. However, the Deputy Chairman of the Committee observes that clubs that are subject to a dispute of an international dimension have the possibility, under certain conditions, of filing a claim before FIFA's competent deciding

⁷ 2011/A/2646 Club Rangers de Talca v. FIFA

body, in particular its Dispute Resolution Chamber (DRC), and can therefore benefit, in principle, from a faster procedure than the one before civil courts⁸. Moreover, these clubs can then request the enforcement of the decision before the FIFA Disciplinary Committee.

30. That being said, the Deputy Chairman of the Committee remarks that clubs that are subject to a dispute that is not of an international dimension, cannot profit from the above-described procedures before FIFA. On the contrary, the Deputy Chairman of the Committee notes that these clubs cannot take advantage of the dispute resolution system offered by FIFA and can only claim their debts against a bankrupt club in the relevant proceedings at national level.
31. As a result, the Deputy Chairman of the Committee considers that the utmost obligation of any creditor of a club involved in bankruptcy proceedings is to register and participate in these proceedings at national level to collect its debts.
32. Should however a new club appear and the Creditor claim that this new club should be considered as the successor of the insolvent one, the Deputy Chairman considers that the Disciplinary Committee may only decide whether the new club is the successor of the former/insolvent club and whether it should be liable for the debts of the former/insolvent club provided that the creditor that has benefited from FIFA's dispute resolution system properly took part in the bankruptcy proceedings.
33. The Deputy Chairman finally points out that should a club submit a complaint directly to the Disciplinary Committee without having previously taken part in the bankruptcy proceedings, this would result in unequal treatment towards the other creditors of the bankrupt club who participated in the proceedings at national level, which cannot be accepted under any circumstances.
34. Bearing the above in mind, it appears that nothing in the case file reflects any lack of diligence by the Creditor in recovering its debt. To the contrary, the case file shows a persistent attitude of the Creditor to recover its debt from the Debtor. In addition, neither the Debtor nor the new Club raised any concerns as to the diligent attitude of the Creditor to recover its credit.
35. As a result, the Deputy Chairman of the Committee is satisfied in the current factual circumstances of the case that the Creditor was diligent. Therefore, he finds the new Club liable for the debts incurred by the original Debtor – namely the one related to the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018 – and consequently concluded that the club Hapoel Tel Aviv FC currently managed by the Nissanov Group is responsible for complying with the financial decision taken by the Single

⁸ Cf. art. 22 of the Regulations on the Status and Transfer of Players

Judge of the Players' Status Committee on 6 March 2018, under the terms of art. 64 of the 2017 FDC.

D) Sanctions

36. With regard to the sanction to be imposed, the Deputy Chairman of the Committee recalls that the 2017 FDC is applicable. In particular, the latter refers to art. 64 of the 2017 FDC, in accordance with which anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision:
- a) will be fined for failing to comply with a decision;
 - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;
 - c) if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, (...) a transfer ban may also be pronounced.
37. The fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2017 FDC, in combination with art. 15 par. 2 of the 2017 FDC shall range between CHF 300 and CHF 1,000,000.
38. The original Debtor and, subsequently, the new Club withheld the amount unlawfully from the Creditor despite FIFA's attempts to urge them to settle the debts towards the Creditor.
39. In view of all the circumstances pertaining to the present case and particularly taking into account the outstanding amount due, the Deputy Chairman of the Committee regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Committee's established practice.
40. In application of art. 64 par. 1 b) of the 2017 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Deputy Chairman of the Committee decides to grant a final deadline of 30 days for the amount due to be paid to the Creditor.
41. In continuation, in view of the circumstances of the case (namely the long period during which the decision rendered by the Single Judge of the Players' Status Committee had not been complied with, to the detriment of the Creditor) but also the aim of the provision at hand (*i.e.* to ensure that decisions passed by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision are respected and complied with) while

keeping in mind the content of FIFA circular no. 1628, the Deputy Chairman of the Committee considers a ban from registering new players (at national and international level) as an appropriate sanction. In particular, taking into account the standing practice of the Committee in similar situations, the Deputy Chairman of the Committee holds that such ban will be automatically imposed on the new Club following the expiry of the granted deadline and will only be lifted upon the payment of the total outstanding amount to the Creditor.

42. For the sake of good order, the Israel Football Association is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Club. In this respect, and for the sake of clarity, the Israel Football Association is referred to art. 34 of the 2019 FDC, in what concerns the calculation of time limits. Should the Israel Football Association fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

III. has therefore decided

1. The club Hapoel Tel Aviv FC (hereinafter, the Debtor) is found guilty of failing to comply with the decision passed by the Single Judge of the Players' Status Committee on 6 March 2018 according to which it was ordered to pay to the club FC Bate Borisov (hereinafter, the Creditor):

EUR 100,000 within 30 days of notification of the decision plus 18% interest *p.a.* as of 28 December 2016 until the date of effective payment.

2. The Debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.
3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.
4. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Israel Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented

automatically at national and international level by the Israel Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

5. As a member of FIFA, the Israel Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Israel Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.
6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Israel Football Association of every payment made and to provide the relevant proof of payment.
7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Israel Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera
Deputy Chairman of the FIFA Disciplinary Committee

Note relating to the payment of the fine

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

LEGAL ACTION

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

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