Decision
of the
Member of the FIFA Disciplinary Committee

Mr Kia Tong Lim [SLN]

on 14 January 2020,

to discuss the case of:
Club Al Wahda Sports Club, United Arab Emirates
(Decision 191616 PST)

regarding:
failure to comply with
art. 15 of the FDC (2019 ed.)
I. inferred from the file

1. On 22 August 2018, the Single Judge of the Players’ Status Committee decided that the club El Zamalek (hereinafter: the Debtor) had to pay:

To the club Bursaspor Kulübü Dernegi (hereinafter: the Creditor):

**EUR 300,000** as penalty fee within 30 days of notification of the decision plus 5% interest per year as of expiry of the fixed time limit until the date of effective payment;

**CHF 5,000** as costs of the proceedings.

To FIFA:

**CHF 13,000** as costs of the proceedings.

2. The terms of the decision were duly communicated, amongst others, to the parties on 4 September 2018. Moreover, the Debtor requested the grounds of the decision, which were duly communicated, amongst others, to the parties on 8 March 2019. Finally, no appeal was filed before CAS, and therefore, the decision of the Single Judge of the Players’ Status Committee dated 22 August 2018 became final and binding.

3. On 25 November 2019, the Creditor sent a correspondence informing FIFA that no payment had been received up to that date, and that the Debtor had allegedly forged documents intentionally. The Creditor’s position can be summarized as follows:

- After the decision of the Single Judge of the Players’ Status Committee dated 22 August 2018 became final and binding, the Creditor requested unsuccessfully from the Debtor on 22 March 2019 the payment of the outstanding amounts due and provided the details of a bank account in the name of the club. Given the lack of payment of those amounts, the Creditor requested FIFA on 21 May and again on 5 July 2019 for disciplinary proceedings to be opened against the Debtor.
- On 30 August 2019, the Debtor requested the Creditor’s bank details in order to proceed with the payment of the outstanding amounts. In this regard, the Creditor sent to the Debtor on 18 September 2019 a power of attorney entitling Mr Nihat Güman as the club’s legal representative, as well as the details of the bank account in the name of the club.
- On 30 October 2019, the Creditor received a correspondence from the Debtor informing of the alleged payment of the outstanding amounts. However, the Creditor confirms never having received any payment. Moreover, upon examination of the correspondence received from the Debtor, the Creditor
noticed that the payment had been allegedly made to Mr Kadir Durmaz, who is an unknown individual to the Creditor and who has no relationship with the club. Furthermore, the Debtor’s correspondence included an alleged exchange of email correspondences between the parties that has been forged by the Debtor, given that the Creditor’s stamp that appears on the documents allegedly sent by the Creditor to the Debtor has been forged, and the email address of the Creditor’s legal representative has also been forged by the addition of a letter “r”, namely: av.jaledemir.bursaspor@gmail.com vs av.jaledemirr.bursaspor@gmail.com. 

- Therefore, it is clear that the beneficiary to whom the Debtor made the alleged payment, Mr Kadir Durmaz, has no connection whatsoever with the Creditor, and the documents submitted by the Debtor to FIFA have been forged.

4. In light of the foregoing, and as the aforementioned amounts were not paid to the Creditor and to FIFA, the secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) opened disciplinary proceedings against the Debtor on 9 December 2019.

5. Additionally, the Secretariat informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 13 January 2020, and invited the Debtor to provide its position within six days of the notification of the opening of the disciplinary proceedings. Moreover, the Secretariat informed the Debtor that the member of the FIFA Disciplinary Committee would take a decision based on the documents in his possession, should the Debtor fail to submit any statement by the specified deadline.

6. On 15 December 2019, the Debtor requested an extension of the deadline to provide its position. In this regard, the Debtor informed FIFA that it had already made the payment of the outstanding amounts to a bank account in the name of Mr Kadir Durmaz provided by the Creditor on 1 September 2019. Moreover, the Debtor informed FIFA that the Creditor later claimed not to have received the payment and to have sent a letter to the Debtor on 1 September 2019 with a bank account in the name of Nihat Güman to which the payment had to be made. According to the Debtor, it never received the letter with the bank account in the name of Mr Nihat Güman.

7. On 22 December 2019, further to the extension provided by FIFA, the Debtor provided its position, which can be summarized as follows:

- After the decision of the Single Judge of the Players’ Status Committee dated 22 August 2018 became final and binding, the Debtor requested on 30 August 2019 from the Creditor the bank details of the account to which the payment of the outstanding amounts due in accordance with the aforementioned decision should be made.
On 1 September 2019, the legal representative of the Creditor, Mrs Jale Demir, provided the Debtor with the bank details to which the payment should be made, namely a bank account in the name of Mr Kadir Durmaz.

On 10 September 2019, the Debtor instructed its bank to transfer the amount of EUR 314,342 to the abovementioned bank account indicated by the Creditor, and the transfer was processed on 12 September 2019.

On 15 September 2019, the Debtor sent proof of the abovementioned payment to the Creditor, without receiving any complaint thereto related.

As regards the letter allegedly sent by the Creditor on 1 September 2019 providing the bank details of Mr Nihat Güman in order for the payment to be made therein, the Debtor never received such document but only the letter with the bank details of Mr Kadir Durmaz.

Moreover, the issue regarding the discrepancy between the email addresses of the Creditor’s legal representative is not relevant, as it cannot be verified because all correspondence between clubs was made on a confidential basis and only between them. In this regard, what is really important is to verify the documents received by the Debtor, and in that sense only the letter dated 1 September 2019 with the bank details of Mr Kadir Durmaz was received.

In conclusion, the Debtor has fully respected the decision of the Single Judge of the Players’ Status Committee dated 22 August 2018, and therefore the disciplinary proceedings opened against it have no legal basis.

8. On 10 January 2020, further to the Secretariat providing the Debtor’s position to the Creditor and asking for confirmation on whether any payment had been received, a correspondence was received from Mrs Jale Demir, which can be summarized as follows:

- Mrs Jale Demir has been the legal representative of the Creditor until October 2019, and is sending the subject correspondence under the knowledge and consent of the club and its legal representative, Mr Nihat Güman, both in copy in the correspondence.
- Mr Güman, and consequently the Creditor, declare that no payment has been received from the Debtor.
- Moreover, Mr Güman already explained in the Creditor’s position submitted to FIFA on 25 November 2019, which he reiterates at this point, that the Creditor has no relation whatsoever with the recipient of the payment allegedly made by the Debtor, Mr Kadir Durmaz, and that the documents submitted by the Debtor allegedly having been sent to it by the Creditor, as well as the email address provided of the legal representative of the Creditor, have been forged by the Debtor.
• Therefore, the Creditor has no connection with Mr Kadir Durmaz and has not received any payment from the Creditor.

9. In this context, the Secretariat sent an email on 13 December 2019 informing the parties that an extension for a possible negotiation had to be agreed by the Debtor directly with the Creditor, and consequently requested confirmation from the Creditor as to whether he agreed to grant the Debtor the proposed extension.

10. On the same date, the Creditor informed FIFA that he rejected the Debtor’s proposal for an extension.

II. and considered

1. 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 FIFA Disciplinary Code (hereinafter also referred to as the FDC) on member associations, clubs, officials, players, intermediaries and licensed match agents.

2. 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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS (art. 15 par. 1 of the FDC – 2019 Ed.):
   a) will be fined for failing to comply with a decision; in addition:
   b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;
   c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 15 par. 3 of the FDC).

3. Moreover, in line with art. 54 par. 1 h) of the FDC, cases involving matters under art. 15 of the FDC may be decided by one member of the Disciplinary Committee alone, acting as a single judge (hereinafter also referred to as the Single Judge).
4. The Single Judge emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.

5. Having said that, the Single Judge notes that the terms of the decision were duly communicated, amongst others, to the parties on 4 September 2018. Moreover, the Single Judge notes that the Debtor requested the grounds of the decision, which were duly communicated, amongst others, to the parties on 8 March 2019. Finally, the Single Judge notes that no appeal was filed before CAS, and therefore, the decision of the Single Judge of the Players’ Status Committee dated 22 August 2018 became final and binding.

6. In view of what has been explained under paragraph II./4. above, the Single Judge is not allowed to analyse the case decided by the Single Judge of the Players’ Status Committee as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision rendered by the Single Judge of the Players’ Status Committee.

7. In this regard, the Single Judge notes that the Creditor confirms that despite having provided its bank details to the Debtor, no payment has been received in the bank account provided.

8. As the Debtor did not comply with the decision passed by the Single Judge of the Players’ Status Committee on 22 August 2018, and is consequently withholding money from the Creditor, it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the FDC.

9. The fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 300 and CHF 1,000,000. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA’s attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Single Judge regards a fine amounting to CHF 7,500 as appropriate. This amount complies with the Committee’s established practice.

10. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.

11. In accordance with art. 15 par. 1 c) of the FDC, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.
12. The United Arab Emirates 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 Debtor. In this respect, and for the sake of clarity, the United Arab Emirates Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the United Arab Emirates Football Association fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof 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 Al Wahda Sports Club (hereinafter: the Debtor) is found guilty of failing to comply with the decision passed by the Single Judge of the Players’ Status Committee on 22 August 2018, according to which it was ordered to pay to the club Bursaspor Kulübü Dernegi (hereinafter: the Creditor):

   EUR 300,000 as penalty fee within 30 days of the date of notification of the decision plus 5% interest p.a. as from expiry of the aforementioned time limit until the date of effective payment.

2. The Debtor is ordered to pay a fine to the amount of CHF 20,000. 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 United Arab Emirates 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 United Arab Emirates 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 United Arab Emirates 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 United Arab Emirates 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 United Arab Emirates 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 United Arab Emirates Football Association of every payment received.

FÉDÉRATION INTERNATIONALE 
DE FOOTBALL ASSOCIATION

[Signature]

Kia Tong Lim
Member of the Disciplinary Committee

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LEGAL ACTION

According to art. 64 par. 5 of the FDC and art. 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:
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org