

Sent to:

Israel Football Association
General Secretariat
Decision Ref: 200508



Zurich, 25 May 2020

Notification of the grounds of the decision

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 14 May 2020.

The Israel Football Association is kindly requested to forward this decision to the club Hapoel Tel Aviv FC.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA

A handwritten signature in black ink, appearing to be "C. Schneider", written in a cursive style.

Carlos Schneider
Head of the FIFA Disciplinary Department

Cc: - Mr Antal Liviu Ion, c/o Ms Anca Mituica
- Hapoel Tel Aviv FC, c/o Mr Joseph Gayer

Decision

of the

Member of the FIFA Disciplinary Committee

Mr ALMISEHAL Yasser [KSA], Member

on 14 May 2020,

to discuss the case of:

Hapoel Tel Aviv FC, Israel

(Decision 200508 PST)

regarding:

failure to comply with

art. 15 of the FDC (2019 ed.)

I. Inferred from the file

1. On 31 October 2019, the Dispute Resolution Chamber decided that the club Hapoel Tel Aviv FC (hereinafter: *the Debtor*) had to pay to the player Antal Liviu Ion (hereinafter: *the Creditor*):

EUR 71,000 as outstanding remuneration, within 30 days as from the date of notification of the decision plus 5% interest *p.a.* calculated as follows:

- 5% interest *p.a.* over the amount of EUR 20,000 as from 11 September 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 October 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 November 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 December 2016 until the date of effective payment;

EUR 250,000 as compensation for breach of contract without just cause, within 30 days as from the date of notification of the decision plus 5% interest *p.a.* as from 4 January 2017 until the date of effective payment.

2. The grounds of the decision of the Dispute Resolution Chamber were requested by the Debtor and duly communicated, amongst others, to the parties on 29 January 2020. No appeal was filed before the Court of Arbitration for Sport and, therefore, the decision from the Dispute Resolution Chamber dated 31 October 2019 became final and binding.
3. As the aforementioned amounts were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor on 21 April 2020 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 11 May 2020, and was invited to provide its position within six days of receipt of the notification of the opening of disciplinary proceedings.
4. On 26 April 2020, 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 and 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 the player Antal Liviu Ion and it is highly probable that he will receive payments from the liquidators, but Mr Liviu Ion 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;
- It is clear that the new ownership of the club is not the successor of Harel Holdings, given that although the club has kept its name Hapoel Tel Aviv FC, the rest of the club has changed completely;
- Finally, the club was already sanctioned by the Israel Football Association for not paying its foreign creditors, with a deduction of nine (9) points in the domestic championship.

5. Upon receipt of the aforementioned Debtor's position that included the list of creditors of Harel Holdings, and further to checking that the Creditor is included therein, the Secretariat submitted the matter to the Member of the FIFA Disciplinary Committee on 11 May 2020.

II. and considered

1. In the case at hand, in view of the arguments raised by the Debtor, the Member of the FIFA Disciplinary Committee, acting as a single judge (hereinafter: *the Single Judge*), 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 FC 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 Dispute Resolution Chamber on 31 October 2019.

A) Applicable law

2. First of all, the Single Judge would like to analyze which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Single Judge 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 Single Judge highlights that the disciplinary offense, i.e. the potential failure to comply with the Dispute Resolution Chamber decision, was committed after the 2019 FDC entered into force. As a result, the Single Judge deemed that the merits and the procedural aspects of the present case fall under the 2019 edition of the FDC.

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

5. In view of the circumstances of the case, the Single Judge 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.

6. 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 may be decided by one member of the Disciplinary Committee alone, i.e. the Single Judge in the case at hand.
7. In this context, the Single Judge first emphasises that it is uncontested that the club Hapoel Tel Aviv FC subject of the decision of the Dispute Resolution Chamber 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.
8. In these circumstances, the Single Judge 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.
9. 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.
10. 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.
11. 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 Single Judge 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.
12. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport, the Single Judge 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.

13. As a consequence, the Single Judge deems that he is competent to assess the present matter and therefore to pass a formal 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. 15 of the 2019 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

14. After having established that the Single Judge 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.

15. In this sense, the Single Judge found it worthwhile to recall the existing jurisprudence from CAS on this particular topic.

16. To that end, the Single Judge 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).

17. 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

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

² CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A/2778

³ FIFA DRC 12150569

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 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.

18. 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.
19. For the sake of completeness, the Single Judge 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”.
20. With the above in mind, the Single Judge 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.
21. In this sense, the Single Judge 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, etc) and, most importantly, has maintained its affiliation to the Israel Football Association and has continued competing in the same category.
22. In light of all the above, the Single Judge 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 sporting successor of the Debtor, the club Hapoel Tel Aviv FC managed by Harel Holdings.

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

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

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

23. In this regard, the Single Judge notes that neither the original Debtor nor the new Club have complied with the decision passed by the Dispute Resolution Chamber on 31 October 2019, as neither club has paid the outstanding amounts to the Creditor.
24. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Single Judge 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. 15 of the 2019 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 Dispute Resolution Chamber

25. First and foremost, the Single Judge 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 his 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. 15 of the 2019 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed⁷.
26. In this context, the Single Judge 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 Single Judge deems it of paramount importance that the creditor seeking to recover his debt participates in the bankruptcy proceedings at national level.
27. In this regard, the Single Judge 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.
28. However, the Single Judge observes that players of a club who are subject to a dispute of an international dimension have the possibility, under certain conditions, of filing a claim before FIFA's competent deciding 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 players can then request the enforcement of the decision before the FIFA Disciplinary Committee.
29. That being said, the Single Judge remarks that players of a club who 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 Single Judge notes that

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

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

these players 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.

30. Having in mind the particular characteristic of bankruptcy proceedings, the Single Judge holds the view that when a club is undergoing bankruptcy proceedings, all its players (and/or former players), should, at first sight, have the same chances of recovering their debts, regardless of the nature of the obligation.
31. As a result, the Single Judge considers that the utmost obligation of any player (and/or former player) of a club involved in bankruptcy proceedings is to register and participate in these proceedings at national level to collect his debts.
32. Should however a new club appear and the player claim that this new club should be considered as the successor of the insolvent one, the Single Judge 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 player that has benefited from FIFA's dispute resolution system properly took part in the bankruptcy proceedings.
33. The Single Judge finally points out that should a player 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 players (and/or former players) 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 his debt. To the contrary, the case file shows a persistent attitude of the Creditor to recover his 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 his credit.
35. As a result, the Single Judge 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 Dispute Resolution Chamber on 31 October 2019 – 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 Dispute Resolution Chamber on 31 October 2019, under the terms of art. 15 of the 2019 FDC.

D) Sanctions

36. With regard to the sanction to be imposed, the Single Judge recalls the content of art. 15 of the 2019 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 CAS decision (financial decision):

- 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 to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid (...).

37. The fine to be imposed under the above-referenced art. 15 par. 1 a), in combination with art. 15 par. 2 of the 2019 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 amounts due, the Single Judge regards a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee's established practice.

40. In application of art. 15 par. 1 b) of the 2019 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Single Judge 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 Dispute Resolution Chamber 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 Single Judge 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 Single Judge 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 (hereinafter: *the Debtor*) is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 31 October 2019, according to which it was ordered to pay to the player Antal Liviu Ion (hereinafter: *the Creditor*):

EUR 71,000 as outstanding remuneration, within 30 days as from the date of notification of the decision plus 5% interest *p.a.* calculated as follows:

- 5% interest *p.a.* over the amount of EUR 20,000 as from 11 September 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 October 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 November 2016 until the date of effective payment;
- 5% interest *p.a.* over the amount of EUR 17,000 as from 11 December 2016 until the date of effective payment;

EUR 250,000 as compensation for breach of contract without just cause, within 30 days as from the date of notification of the decision plus 5% interest *p.a.* as from 4 January 2017 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 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



ALMISEHAL Yasser
Member 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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