INSIGHT

expert talk

SPORTS ARBITRATION: AN INDIAN OVERVIEW

MARCH 2021

LAWYERS OF TOMORROW

INDEX TO ANALYSIS OF SIGNIFICANT CASES

The nature of sports disputes is best understood by studying those disputes directly. In this Insight, we have summarized some significant disputes from amongst both commercial and disciplinary sports arbitrations that exemplify the quintessential elements of these disputes. Our readers will find these summaries useful to gain a perspective on what sports arbitrations involve in a concise and

IX	Amar Muralidharan v Indian National Anti-Doping Agency, Indian National Dope Testing Laboratory and Ministry of Youth Affairs and Sports	CAS 2014/A/3639	64
X	Dutee Chand v Athletics Federation of India (AFI), IAAF	CAS 2014/A/3759	69
XI	Indian Hockey Federation (IHF) v International Hockey Federation (FIH)	CAS 2014/A/3828	75
XII	Paris Saint-Germain and Neymar da Silva Santos Junior v UEFA	CAS 2019/A/6367	79
XIII	Russian Doping Scandal	Multiple References	82
XIV	Tamil Nadu Football Association v Pennar Senior FC and Ors	2019 (3) LW 720	87

PART I: INTRODUCTION

1. The sports industry comprises the organization, broadcasting and regulation of sports events, setting up of sports infrastructure, manufacture and sale of sports equipment and merchandise, and the training of professional and amateur players. Picturing the industry as a whole can be difficult, as newer facets keep adding to it continuously. For example, recently, online fantasy leagues have come to the fore. Broadcasting has moved online, with online streaming services becoming a huge source of revenue. Newer technologies developed for sports, such as the hawk-eye technology used in cricket, mean that a more diverse set of manufacturing, sale and supply units get encompassed within the industry. However, the face of the sports industry today consists of commercialized sports leagues that offer huge opportunities for businesses to reap profits from sports. Broadcasting and sponsorship are the largest contributors to revenue made from sports events, accounting for nearly 70% share in this segment.[1] It is this segment which has brought the Indian sports industry to the limelight in the last decade.

2. The various segments of the sports industry described above make it an extremely lucrative market. The global sports market was estimated at USD 488. 5 billion in 2018, with expectation to grow to USD 614 billion by 2022.[2] Other analyses put this figure even higher, at USD 600-700 billion in 2014 itself.[3] The global sports events market alone accounted for USD 64 billion as far back as 2009.[4] Either way, this shows that the industry accounts for significant participation of businesses, and has a lot of potential for growing even further.

3. In India too, with greater incentivization of sports, the industry is growing by leaps and bounds. In 2015, the Indian sports industry was estimated to be worth INR 144 billion.[5] Growth in sports spending was twice the growth in GDP of India in 2001-2009.[6] While India's love of cricket and a strong sports manufacturing sector have contributed to the sports economy for longer, the last two decades have seen particularly strong developments in the Indian sports market. This growth led the Central government to include sports infrastructure in the Harmonized Master List of Infrastructure Subsectors, which enables infrastructure projects related to sports to get concessional loans from banks and financial institutions.[7]

4. This recent growth in the Indian sports industry was led by newer and greater number of sports events being organized in India at both the national and international level, which created significant business and employment opportunities. The following list gives a picture of the size of the market for sports

(a) International competitions;

(i) In 2010, India hosted the XIX Commonwealth Games, hosting a total of 4352 athletes. This made it one of the largest editions of the Commonwealth Games to date.[8]

(ii) India hosted three editions of the F1 Indian Grand Prix at the Buddh International Circuit between 2011 & 2013, a first foray into formula racing events.

(iii) India hosted the Men's FIH Hockey World Cup in 2010 and 2018. India is scheduled to host it again in 2023, on the back of offering the highest guaranteed profits from the event.[9]

(iv) In cricket, India hosted ICC Cricket World Cup (ODI) in 2011, ICC World T20 (both men and women) in 2016, and is scheduled to host the World Cup again in 2023.

(v) In 2017, India hosted the FIFA u-17 World cup, which was the first FIFA event ever hosted by India. The attendance for this event was the highest ever in the history of the FIFA u-17 World Cup.[10]

(b) Domestic competitions

(i) Indian Premier League ("**IPL**"): Started in 2007, the T20 cricket tournament is credited with beginning the wave of commercialized sports league in India. It is the most successful league in India, valued at USD 6.8 billion in 2019.[11]

(ii) I-league: Started in 2007, I-league is a football championship organized between clubs based in Indian cities, much on the lines of globally renowned football leagues such as the English Premier League, La Liga, etc. The I-league has really taken off only after the All India Football Federation (AIFF) signed a deal with IMG-Reliance in 2010 to transfer all commercial rights over football in India to the latter for a contract price of INR 7 billion.[12]

(iii) Indian Super League ("**ISL**"): ISL is a football championship organized in a similar club-based format. Started in 2014, ISL has become India's premier football championship, overtaking the I-league. Reportedly, the franchise for each club has been bought at a price of INR 130-160 crores for a period of 10 years.[13]

(iv) Pro Kabbadi League ("**PKL**"): PKL is a professional-level kabbadi league in India that was launched in 2014. Started by Mashal Sports and Star India,

the league has become a commercial success, second only to IPL.[14] Franchises were reportedly bought at around USD 250,000 each,[15] and the sponsorship and advertising revenue in 2017 was reported to be between INR 250-300 crores.[16]

(v) Chennai Open: Started in 1996, the Chennai Open is the largest tennis event in India. The tournament has seen tennis stars like Cilic, Stanislaus Warwinka, Milos Raonic, Patrick Rafter, Carlos Moya and Rafael Nadal compete in the past. The tournament had to shift from Chennai to Pune in 2017, and is now known as the Maharashtra Open.[17] The prize money for the 2020 edition was USD 546,000.[18]

(vi) Pro Wrestling League ("**PWL**"): Started in 2015, PWL is an Olympic-styled wrestling league organized between six teams. It has successfully organized four seasons, with the viewership of its inaugural season surpassing that of ISL and PKL.[19]

(vii) Hockey India League ("**HIL**"): Started in 2013, HIL is a professional league for field hockey competitions in India. The competition had largely been a commercial success, pulling the financials of its organizer Hockey India from a profit of INR 14.7 lakh in 2011 to a profit of INR 7.85 crore in 2013-14.[20] The last season was organized in 2017.

(viii) Premier Badminton League ("**PBL**"): Started in 2013, PBL is a team-based badminton competition that has organized 5 seasons. It has been called the richest badminton league in the world.[21] In the latest edition, the team purse for each franchise was INR 2 crore, and the price money was INR 6 crores.[22]

(ix) World Kabbadi League ("**WKL**"): Started in 2014, WKL is the first worldwide circle-style kabbadi league.[23] It features teams from India, Canada, UK, USA and Pakistan.

(x) Asian Premier Futsal Championship ("**APFC**"): Started in 2016, the APFC generated great interest with its five-a-side league-based format. It managed to pull several marquee players such as Ronaldinho, Hernan Crespo, Paul Scholes and Ryan Giggs. It successfully completed two seasons before running into troubles.[24]

5. Therefore, it is clear that there has been significant growth in the commercialization of Indian sports. However, it is also clear that the Indian sports industry is still very much in its infancy. Major leagues in Europe and US have a history spanning several decades.[25] In contrast, the oldest leagues in India, such as

as described above, several Indian leagues have been unable to find firm footing; many have had to either rebrand themselves, skip certain years or get cancelled altogether. Even the most successful Indian league, i.e., IPL, is dwarfed by major foreign leagues such as National Football League in the USA, the English Premier League in UK and the National Hockey League in USA and Canada in terms of the revenue these leagues make.[26] Therefore, the Indian market is far from saturated, and there is still considerable room for sports businesses to grow and expand.[27]

6. At the same time, the lack of success in certain leagues does not lend to pessimism. Even though a lesser percentage of people may be viewing sports in India, by virtue of India's large population, they are still significant numbers in absolute terms.[28] This keeps broadcasting and sponsorship, the twin pillars of revenue, extremely profitable. Moreover, Indian demand for sports continue to diversify beyond cricket, aided by corporate efforts to tap into rural markets.[29]

7. Like in any other industry, growth has led to increased sophistication in the way commercial relationships are formed between all stakeholders in the sports industry. The high stakes involved means that parties not only take greater caution in forming contracts, but also that when things go south, they want their disputes to be resolved with greater efficiency. This has naturally led to increased use of arbitration to resolve disputes in sports. In fact, arbitration has also been customized to a great extent to serve the unique needs of the sports industry.

8. This chapter analyses the extent to which arbitration has been incorporated into the Indian sports industry, and what potential it holds for permeating even further in the future. In order to do so, the chapter will list, categorize and describe the various kinds of disputes that typically end up in arbitration in the sports industry. Broadly, we see two genres of disputes in sports: purely commercial and disciplinary matters. There is significant difference between these genres in the way arbitration is agreed to, conducted and enforced. Therefore, Part II of this chapter will explore arbitration involving commercial sports disputes, while Part III of this chapter will explore arbitration involving disciplinary sports disputes. Part IV will offer concluding thoughts and outlook.

PART II: COMMERCIAL SPORTS DISPUTES

9. The genre of disputes that we discuss in this part are those that are purely commercial in nature. These arise out of contractual agreements for supplying sports-related merchandise and equipment, providing services, licensing rights over tangible property (such as stadiums) and intangible property (such as broadcasting rights), joint ventures to conduct an event, etc. It is neither practical nor efficient to list out all contractual agreements that can possibly arise in the context of sports. Therefore, this Part will take sports events as a nexus, and

describe various examples of contractual agreements that can arise around it. The disputes in these agreements will be the focus of this chapter.

A. Background

10. Before addressing the disputes themselves, it is important to briefly discuss how the first principles of arbitration apply to this genre of disputes. This includes how arbitration agreements are formed, the kinds of arbitrations that can happen, the procedure of these arbitrations, the fora where these arbitrations can take place and the enforcement of awards arising out of these arbitrations.

11. For this genre of disputes, arbitration is largely similar to how it is conducted in any other industry in India. There are three categorizations of these arbitrations:

(a) Nature

i. Domestic: These are only between Indian parties.

ii. International: These involve at least one foreign party.

(b) Procedure

i. Ad-hoc: The procedure of these arbitrations is agreed to by parties themselves, and parties take the initiative in conducting them.

ii. Institutional: The procedure of these arbitrations is provided for in institutional rules, and the institutions conduct these arbitrations, such as SIAC, ICC, etc.

(c) Seat

i. India: These are governed by Part I of the Indian Arbitration and Conciliation Act 1996 ("**Act**")

ii. Abroad: These are governed by Part II of the Act.

12. Parties give their consent to arbitration by agreeing to it in writing.[31] Usually, arbitration agreements would only bind the signatories thereto. However, in exceptional circumstances, even non-signatories to the agreement can be subjected to arbitration, where it can be demonstrated that the intention of the parties was to bind such non-signatories as well.[32] Examples of such exceptional circumstances are where the non-signatory is a group company of one of the signatories, or where the arbitration agreement is contained in a contract which is part of a larger composite transaction consisting of multiple contracts.

13. Courts are restricted from interfering with arbitrations, except for matters which are expressly allowed by the Act.[33] These matters include referring disputes to arbitration, appointing arbitrators where parties are unable to do so, granting

interim measures where the tribunal is not formed, assisting in taking evidence, hearing appeals from certain orders of the tribunal, and enforcing awards. Even in these matters, the Act largely allows interference on very narrow grounds.

14. The procedure of arbitration is regulated by the parties' agreement. In ad-hoc arbitrations, parties have complete freedom to evolve the procedure of arbitration as they proceed. In institutional arbitrations, parties agree to conduct their arbitration as per a specific institution's rules, and then the institution's rules are binding on the parties. SIAC, ICC, LCIA, etc. are some of the world's most renown arbitral institutions. There are also specialised institutions for conducting commercial arbitrations in sports, such as the Court of Arbitration for Sports ("**CAS**"), Basketball Arbitral Tribunal ("**BAT**"), etc.

15. Every arbitration proceeds through the following key steps:

(a) Notice of Arbitration and Response

(b) Appointment of the tribunal

(c) Statement of Claim and Defence

(d) Exchange of evidence: witness statements and replies, discovery, etc.

(e) Final Hearing: opening submissions, cross-examination and closing submissions.

(f) Rendering of the award and enforcement

16. Once awards are rendered, parties usually comply with them on their own initiative. However, if parties don't comply, awards must be brought to courts for enforcement. Awards rendered by India-seated tribunals are enforced under Part I of the Act, while awards by foreign-seated tribunals are enforced under Part II of the Act. Most of the grounds for refusing enforcement of awards are common under Part I and Part II; the key difference is that awards rendered in domestic arbitrations under Part I can also be set aside on grounds of patent illegality appearing on the face of the award.

B. Kinds of commercial sports disputes

17. For commercial disputes, the nature of the dispute would largely depend on the type of contractual arrangement between the parties, and consequently, what rights and obligations they had agreed upon. For this reason, we discuss the kinds of commercial sports disputes along with the kinds of contractual agreements we see in the sports industry.

(a) Agreement between a National Sports Federation and a Private Organizer

18. In India, sports are regulated and developed at the national level by

autonomous organisations known as National Sports Federations ("**NSF**"). Examples of this are the Board of Control for Cricket in India ("**BCCI**"), All India Football Federation ("**AIFF**"), etc. An NSF for a particular sport gains legitimacy by being recognized by the body organizing that sport at the international level. NSFs depend on the government for funding to varying extents, and the government uses this as leverage to indirectly regulate them. NSFs in turn exercise governance over State Sports Federations ("**SSF**").

19. Since NSFs regulate sports in India, any league in a particular sport can only be sanctioned by them. However, some NSFs lack the initiative and vision to conceptualize and organize commercialized leagues on their own. Consequently, private companies wishing to organize a league approach the NSFs to jointly organize such leagues. Several leagues in India, such as the ISL, PBL, APFC, etc. are organised on these lines. The NSF and the private organizer in question enter into a contractual arrangement, whereby the NSF transfers commercial rights and decision-making power to the latter in varying degrees. Both agree to share revenues.

20. Since commercialized sports are still at an early stage of development in India, there are many leagues which fail to generate expected revenues in their first few seasons. The resulting monetary crunch inevitably leads to disputes between parties.[34] A notable example is the PBL, which started out with the name 'Indian Badminton League. Sporty Solutions Private Limited ("**Sporty**") had contracted with the Badminton Association of India (the NSF for badminton) ("**BAI**") to organize this tournament. However, after the first season generated losses, BAI demanded a bank guarantee as a condition of organizing further seasons. The contract was terminated when Sporty failed to produce such a bank guarantee.[35] The Women's Professional Golf Tour also resulted in such a dispute when the Women's Golf Association of India failed to pay contractually agreed fees to the private organizer, Sports Leisure Worldwide.[36] Other disputes under such agreements typically involve conflict of interests, manner and format of conducting the sport, governance-related issues, nature and scope of commercial rights, non-payment of fees, etc.

(b) Franchise Agreement between a Club / Team and the League

21. A team or a club participating in the league is not just competing in the sport; it also gains significant revenue streams of its own from the competition, depending upon the model of the league. Therefore, every team/club must purchase the right to play in the league. This is formalized by a franchise agreement between the team/club and the league (constituting of the NSF and the private organizer). The

time to time, any revenues that the league must share with the club and vice-versa, the number of seasons for which the team will play, etc.

22. There are several disputes that can arise in this agreement. Some of the most well-known examples are from the IPL, as described below:

(a) In 2010, Sahara Adventure Sports Ltd. ("**Sahara**") bought the Pune franchise with the highest bid in the history of IPL. One of the reasons for making such a high bid was that the 2011 season was expected to have 94 matches. However, the BCCI later reduced the matches to 74, resulting in lower revenues for teams. Due to this, Sahara demanded that the franchise fees should also be proportionately reduced. Although BCCI agreed to conduct arbitration over this, the arbitrator was not appointed for 3 years. Finally, Sahara decided to hold back a bank guarantee that every team is required to put up for every season in favour of BCCI. The BCCI saw this is a violation of the franchise agreement, and terminated the agreement.[37]

(b) The Kochi franchise was bought by a consortium of persons ("**Consortium**"). Disputes arose when the Consortium claimed that BCCI failed to pay the team's share in revenues, and also failed to reduce franchise fees proportionate to reduction in number of matches from 94 to 74. On the other hand, BCCI terminated the franchise agreement due to the Consortium's failure to put up an annual bank guarantee. Eventually, an arbitrator found that BCCI had terminated the agreement wrongfully, and awarded Rs. 550 crores to the Consortium.[38]

(c) Similar disputes arose between BCCI and the owners of the Deccan Chargers franchise.[39]

23. Disputes are also brewing in football. FIFA and AFC (the global and Asian governing bodies for football respectively) have regulations mandating that a club should be allowed to compete in national leagues purely on the basis of merit. While I-League adheres to this, the ISL has franchised clubs on the basis of commercial bids. To address these concerns, a confidential report by the AFC has recommended to the AIFF that clubs performing badly in ISL should be relegated to I-league, and clubs performing well in I-league be promoted to ISL. If implemented, these changes would violate the franchise agreements between ISL and its clubs, as these agreements have a clause preventing relegation of ISL clubs for 10 years.[40] [41]

(c) Broadcasting Agreement between a Club/League and a Broadcaster

24. Broadcasting opens the door for significant revenues for sports events. On-air

relevant example of player-club disputes in India.

(e) Sponsorship Agreements

30. Sponsorships are one of the biggest sources of revenue for sports events. Brands see the huge viewership of commercial leagues and sports events as extremely lucrative target audience. These brands typically enter into sponsorship agreements with the following stakeholders:

(a) Leagues: Examples are Vivo being the title sponsor for IPL and PKL.

(b) Teams/Clubs: Examples are BurgerKing, BookmyShow sponsoring the Mumbai Indians.[45]

(c) Players: Popular players have significant fan-following of their own, which brands are interested in tapping into.

31. Disputes in these agreements typically arise when there is a conflict between image rights owed to rival sponsors. A popular example is of Mohamed Salah, an Egyptian national footballer who plays for the English club Liverpool. Salah had assigned his image rights to Vodafone in his personal capacity. However, the Egyptian Football Association (the governing body for football in Egypt) allowed the use of Salah's image on the outside of the Egyptian national team's plane, which was sponsored by Egyptian telecom giant 'WE'. This conflict would have resulted in Vodafone taking action against Salah, Egyptian Football Association and / or WE, but was successfully averted when the Football Association removed the image.[46]

32. Another aspect of disputes under such agreements are pertaining to renewal rights or first rights. Sponsorship agreements are often formed for a particular term. For example, Vivo agreed to be the title sponsor of IPL for five years. Parties may provide in their contract that once the term of the contract expires, the sponsor would have right to renew the contract, or the first right to acquire sponsorship rights for the post-expiry period. A well-known instance of a dispute over such rights is in the case of MasterCard and FIFA. FIFA failed to offer MasterCard the first right to acquire sponsorship for 2006 onwards, after its existing sponsorship agreement with MasterCard expired. MasterCard was able to successfully obtain permanent injunction against FIFA from granting the sponsorship rights to any other entity.[47]

33. There are often ancillary contractual arrangements related to such sponsorship agreements. For example, a team may contract with a third party for the latter to procure sponsors for the team in return for consideration or commission. A good example of this is when Chennai Super Kings had entered into one such

advertisements are lucrative for firms looking to build their brand around sports, or those simply looking to market to the large viewership of sports events. Recently, with the advent of online streaming services, subscription fees have become a new source of revenue for broadcasters.

25. Traditionally, in sports leagues abroad such as the EPL, the clubs themselves own stadiums where the games are organized. Therefore, it is clubs that license broadcasting rights to broadcasters. However, in India, most stadiums are owned by the government or by NSFs and SSFs. Therefore, it is more common in India for the league or the NSF to contract with the broadcaster.

26. Broadcasting rights for the IPL had been at the centre of a highly publicised dispute, when the then Commissioner of BCCI, Lalit Modi, had assigned these rights to World Sport Group ("**WSG**") without following any tendering process. Multi Screen Media ("**MSM**") was another company that wanted to acquire these broadcasting rights. Lalit Modi and WSG misled MSM into believing that WSG would have to relinquish the broadcasting rights for them to be assigned to MSM. Thus, MSM was pressured into paying Rs. 425 crores to WSG, in consideration for WSG releasing the IPL broadcasting rights back to BCCI, which BCCI formally assigned to MSM.[42]

(d) Agreement between the Team / Club and its Players

27. The players are paid by their respective team / club. In India, most leagues follow a system of auctioning players, where teams/clubs pick their players by bidding from a pre-determined pool of players. The players can later be traded amongst the teams/clubs, usually with the consent of the player.

28. Disputes under these contracts have aggravated due to Covid-19. With the I-league coming to an early end in 2020, several I-league clubs such as Kingfisher East Bengal ("**KEB**") terminated their contracts with their players.[43] It is unclear whether these contracts had arbitration clauses.

29. The infancy of commercial leagues in India has created another unique dimension of player-club disputes in India. Younger leagues, especially in sports that traditionally did not do well in India, often affiliate with players who are not very experienced in contractual matters. Such players can easily be taken advantage of. This happened with Abhinash Ruidas, a footballer who had contracted to play for KEB till the end of 2016-17 season. However, KEB claimed that Ruidas had signed a contract till the end of 2018-2019. Ruidas alleged that his signatures on this alleged contract were forged. Eventually, after the intervention of the AIFF's Player Status Committee, Ruidas received a no-objection certificate, and the alleged contract did not end up in a dispute.[44] However, the incident is a

agreement with Power Play Sports and Management Limited. There were later disputes over whether Power Play was entitled to commission when sponsorships procured by it were renewed.[48]

(f) Agreement between the league and fantasy leagues

34. A recently developed source of revenue surrounding sports events is the concept of 'fantasy league', an online platform that allows fans to virtually act as team owners in a fictional online league modelled on the actual league. The popularity of these leagues have increased with the internet, but the concept has been made more eye-catching by coinciding the fantasy league almost exactly with the actual league. This is done by ensuring that the player pool in the fantasy league is exactly the same as the pool competing in the actual league. Fans 'buy' these players in a virtual auction to form a fantasy team. The performance of the fantasy team is then marked by the performance of each individual player thereof in the actual league, by assigning a fixed number of points to the fantasy team every time a player takes a wicket, scores a run, takes a catch, etc. in the actual league.

35. Since the fantasy league is using the brand and statistical data of the actual league, fantasy leagues enter into an agreement with the actual league to license the use of the latter's brand name and data.

(g) Agreement between Club / Team and owner of stadiums

36. As stated previously, in India, stadiums are typically owned by the government, NSF or SSF organizing that particular sport, and not by the teams/clubs themselves. However, in commercial leagues, teams/clubs often have a 'home ground' to develop a sense of fan loyalty and contribute to increased number of viewers, as well as to serve as a source of revenue by ticketing. Therefore, the team/club will enter into an agreement with the stadium owner to license the use of the stadium for the duration of the tournament.

37. An example of dispute under such contract is that between Sahara and the Maharashtra Cricket Association ("**MCA**"). Sahara had bought naming rights and license to use the MCA Stadium (Pune) to host matches of the Pune Franchise from the MCA. On alleged defaults in payment by Sahara, the MCA had covered Sahara Group's name in the name of the stadium with a black cloth. Sahara approached the Bombay High Court under a S. 9 application under the Act, and by consent, an order was passed directing MCA not to obstruct use of the stadium or display of Sahara's name till the parties reached amicable settlement. Eventually, a sole arbitrator was appointed to resolve the dispute.[49]

38. Although the categories discussed above are not exhaustive, they give a broad

picture of the contractual relationships involved in the sports industry, and the disputes such relationships may lead to.

PART III: DISCIPLINARY ARBITRATION

A. Background

39. The resolution of a dispute through an arbitration is based on the core concept that the parties to the dispute themselves agree to submit to the jurisdiction of an arbitrator or a body of arbitrators (tribunal) as an alternative to litigation before the court systems of a country. The key element in an arbitration is the mutual consent of the parties to refer the dispute to arbitration.

40. It is in the concept of mutual consent of the parties that sports arbitration seems to diverge from arbitrations in a traditional sense. In sports arbitration, it is often observed and alleged by the parties themselves that their consent to arbitrate often stems from their membership in sports bodies whose mandatory rules provide for arbitration.

41. While commercial arbitrations in the sports industry follow the traditional manner of arbitration based on an explicit arbitration agreement, the following classes of disputes differ in this regard:

(a) Anti-doping disputes; and

(b) Disciplinary disputes based on:

(i) A violation of the rules of a sports club/association;

(ii) A violation of the rules of a sports federation;

(iii) A violation of the rules of an international sports federation;

42. In order to understand the difference in consent in the above types of disputes, it is useful to briefly examine the structure of sporting bodies in India.

(a) Structure of sporting bodies in India

43. The organizational structures of sporting bodies in India often mirror India's administrative divisions. The grassroot level sporting bodies are usually at the taluk/city levels. These bodies are usually clubs or associations that are dedicated to a particular sport. Often, athletes are introduced to their sport at this level, playing as part of the club/association's teams in local tournaments.

44. The nature of the infrastructure required for the particular sport often dictates the number and appeal of these organisations. A sport like swimming usually has very few taluk level clubs/associations given the expensive nature of the infrastructure required, as opposed to a sport like wrestling or athletics.

45. It is at the district level that sporting bodies acquire a formal nature, with district sport federations governing the sport at the district level and competing in state level tournaments. Athletes who become members of the District Sports Federations ("**DSF**") are bound by the regulations thereof. The DSF is invariably the only kind of organisation that is allowed to send athletes to compete at the State-level.

46. The State Sports Federation ("**SSF**") is a sports federation at the state level that has as members, more than 50% of the DSFs in the state.[50] The SSF organises competitions for various age groups and at different proficiency levels within the state. These bodies also have regulations that bind their members, i.e., the DSFs and therefore, the athletes themselves.

47. At the national level, the Ministry of Youth Affairs and Sports recognises a single organisation as the NSF governing a sport. The NSF is recognised based on certain criteria including that it must be registered as a voluntary body (Society/Trust), must have existed for at least 3 years prior to the application for recognition and pertinently, that it has a written constitution that governs its functioning.[51]

48. A crucial aspect of an NSF is that it requires recognition by:

(a) The International Sports Federation;

(b) The Asian Sports Federation; and

(c) The Ministry of Youth Affairs and Sports.

49. The International Sports Federation ("**ISF**") and the Asian Sports Federation are international bodies that govern the sport and have their own regulations that member NSFs from each country must adhere to.

50. Thus, the regulations of the sports federation at an international level bind the NSF, whose regulations bind the various SSFs and in turn, the DSFs within India. The corollary of the same is that an athlete who is a member of a DSF, SSF or NSF in India is invariably bound by the regulations that govern her sport at an international level.

(b) The Anti-Doping Regime

51. Sports are based on the fundamental premise of fair play. This principle applies to all forms of organised sports from the district level to international competitions such as the Olympics. Doping is the practice of consuming or using a substance that artificially enhances the performance of an athlete. It is widely regarded as a practice that strikes at the principle of fair play in sporting events.

52. The global commitment against the practice is reflected in the International Convention against Doping in Sport 2005, a UNESCO Convention of which India

is a signatory.

53. The international anti-doping regime is designed to ensure global compliance and mirrors the organisational structure of sporting bodies. The World Anti-Doping Code 2015 is a set of mandatory rules that govern the set of conditions in which sports are played around the world by prohibiting the use of several substances.

54. The Code is administered by a global anti-doping regime, at the apex of which is the World Anti-Doping Agency ("**WADA**") followed by National Anti-Doping Agencies ("**NADA**") in each signatory nation. The signatories to the International Convention against Doping in Sport 2005 are required to enact into their domestic laws, an anti-doping legislation that is identical to the World Anti-Doping Code.

55. Pertinently the Code provides for arbitration of disputes surrounding an anti-doping violation before the CAS in Lausanne, Switzerland.

56. Since anti-doping legislations in the signatory nations must mandatorily reflect the Code, the provision of an appeal to the CAS has been drafted into every domestic anti-doping legislation in the world. As a result, athletes facing an anti-doping rule violation in any jurisdiction can ultimately have their dispute heard by the CAS in appeal.

57. It is important to note that under the Code, the WADA can institute an appeal against the decision of a national anti-doping body before the CAS. The insertion of this mechanism is aimed at ensuring that domestic/national anti-doping bodies are insulated form from bias towards their own nationals.

58. India created, through notification, the Anti Doping Rules 2015 ("**ADR**"), which are substantially the same as the World Anti-Doping Code 2015. These rules set up three stages of adjudication:

(a) The Anti-Doping Disciplinary Panel;

(b) The Anti-Doping Appeal Panel ("ADAP"); and

(c) The CAS

59. The ADR applies on 'athletes', a term whose definition is broad and covers all participants in any organised form of a sport. For "international athletes" the ADR provides for, upon the choice of the parties, a direct CAS arbitration of the disputed anti-doping rule violation.

60. Importantly, unlike the case of league / NSF rule violations, where the athlete's consent is through membership, the ADR applies based on participation. However, since the prerequisite for participation is often membership, this subtle difference is not highlighted.55. Pertinently the Code provides for arbitration of disputes surrounding an anti-doping violation before the CAS in Lausanne, Switzerland.

(c) Consent to arbitration

61. The compliance with the ADR is *de facto* mandatory for all athletes in India. Any athlete playing a sport at an Inter-State (National) and International level is automatically bound to comply with the ADR. However, compliance with the ADR can also be made mandatory by inclusion of such an obligation into the regulations of an SSF or DSF.

62. An athlete playing a sport at a district level may also find herself bound by the ADR solely due to her membership in the DSF. This obligation is despite sports at an intra-state (district) level being solely within the legislative domain of the states under the Constitution of India.

63. An illustration of this concept is as follows:

> "X is a teenager with a keen interest in water polo. X regularly plays water polo at a local club. Since it is the only swimming pool in the district, the club's members have also formed the District Water Polo Association. The association sends a team to participate in the state's annual water polo competitions where teams from every district participate. In order to participate, the association was made a member of the State Swimming Association. The regulations of the State Swimming Association require athletes who are members to ensure strict compliance with inter alia its anti-doping regulations. This obligation is thus included in the District Water Polo Association's regulations that the athlete bound herself to when she became a member. The State Swimming Association's regulations require compliance with ADR 2015 in order to allow its athletes to compete in national level competitions organized by the Swimming Federation of India. The Swimming Federation of India is the NSF for the sport and is recognised by the International Olympic Association, the Ministry of Youth Affairs and Sports and the Asian Swimming Federation. Thee rules of the NSF require arbitration of disputes between its members (the SSFs) and for violation of competition rules. Thus, X has, through her membership in the District Water Polo Association, consented to arbitrating disputes over NSF rule violations, anti-doping rule violations and such other matters that the NSF or SSF may have prescribed."

to waive fully the action for annulment or limit the grounds on which such an annulment may be sought.[55]

71. The issue of the derived consent to arbitration has been agitated before the Swiss Federal Tribunal on several occasions.

72. In its landmark ruling of Canas v. ATP Tour (2007), the Swiss Federal Tribunal recognised the unequal bargaining power between the athlete and sports organizations. The dispute surrounded an alleged anti-doping rule violation by a renowned tennis player. The athlete appealed the decision of the Anti-Doping Tribunal on the main contention that the substance he had used had in fact reduced his performance.

73. The appeal before CAS resulted in the award being partially upheld. While his term of suspension was reduced by CAS, the decisions to disqualify his results and the direction to repay his prize money from the tournament were upheld. The CAS also limited the application of the direction of a refund of prize money to the tournament in question, ruling that it would be unfair to penalize the athlete for subsequent competitions.

74. The athlete approached the Swiss Federal Tribunal to annul the CAS award. The Respondent, the Association for Tennis Professionals (ATP), made the preliminary submission that the appeal was inadmissible as the ATP Rules contained a waiver that was in accordance with Article 192 of the Swiss Federal Statute on Private International Law. Considering the athlete had assented to these rules when he became a member of the ATP, he could not challenge the CAS award.

75. The Swiss Federal Tribunal specifically observed that –

> "Competitive sport is characterised by a very hierarchical structure at both national and international levels. Established on a vertical basis, the relations between athletes and the organisations that govern the different sporting disciplines are different from the horizontal relations between the parties to a contract…. Apart from the fairly hypothetical situation where a famous athlete is so well known that he is able to dictate his conditions to the international federation governing his sport, experience shows that, most of the time, athletes do not have a great deal of power over their federation and have to adhere to its wishes whether they like it or not. Therefore, an athlete who wishes to participate in a competition organised under the auspices of a sports federation whose regulations include an arbitration clause has no option but to accept such a clause, particularly by adhering to the statutes of the sports federation in question in which the clause appears. This is especially true where professional athletes are concerned. They are

64. The above illustration depicts the vast difference in the bargaining power of the athlete vis-a-vis the various sports bodies. The athlete has consented to exclude local courts from the adjudication of a wide range of disputes.

65. In India, football clubs that participate in the I-League require their footballers to bind themselves to arbitration clauses in accordance with the FIFA Statute 2019. This obligation arises on the clubs through their membership in the I-League which is a recognised league by India's football NSF, the All-India Football Federation.

66. The Ministry of Youth Affairs and Sports encourages the arbitration of disputes in the sports sector, particularly on matters of rule violations, anti-doping, match fixing, etc. In a press release dated 17 June 2016 issued to all NSFs in India, the Ministry urged the adoption of arbitration as the chosen means of dispute resolution.[52]

67. This approach would have yielded better results if the arbitration suggested was before a specialised India-seated sports arbitration institution. Athletes in India can often ill afford an arbitration before the CAS and often cannot access it as an appellate forum in their dispute.

(d) Swiss Federal Tribunal precedent

68. The CAS is a private arbitral institution whose jurisdiction is based on the consent of the parties that submit the dispute. The arbitrations before the CAS are seated in Switzerland. Parties are permitted to change the venue based on their mutual agreement.

69. The Swiss courts enjoy the jurisdiction of courts of the seat of arbitration and are the only courts empowered to hear applications to set aside a CAS award. Under the Swiss Federal Statute on Private International Law, the Swiss Federal Tribunal is vested with the sole jurisdiction to set aside an international arbitral award on[53] the following grounds:

(a) If the sole arbitrator was not properly appointed or if the tribunal was improperly constituted;

(b) If the tribunal wrongly accepted or declined jurisdiction;

(c) If the award goes beyond the scope of reference and the claims submitted to it or if one of the claims is undecided;

(d) If the parties were not granted their right to be heard or were treated unequally;

(e) If the award is incompatible with public policy.[54]

70. Importantly the Federal Statute on Private International Law allows parties

confronted with the dilemma of either agreeing to arbitration or practising their sport as an amateur (for discussion of the problem of enforced arbitration"

76. On the point of the waiver of its jurisdiction the Federal Tribunal held that a waiver of appeal should not, in principle, be used as a defence against the athlete even if its meets the technical requirements laid down in Article 192 of the Federal Statute on Private International Law. It based its ruling on its observations[56] that:

(a) That an athlete's waiver of appeal against future awards is not generally an expression of her free will;

(b) That the result of the waiver is the loss of the athlete's right to recourse if fundamental principles and procedural guarantees are violated by the CAS tribunal during the arbitral process;

(c) The result of most disciplinary CAS proceedings is the suspension of the athlete from participation in the organised form of the sport. Suspension is a type of relief that does not require execution and therefore, the athlete is deprived of raising even the limited grounds to resist the enforcement of the award;

(d) The refusal to hear an appeal by an athlete who had no other choice but to waive his right to appeal in order to be allowed to participate in competition, appears questionable under Article 6 of the European Convention on Human Rights which guarantees a right to fair trial.

77. The *Canas* ruling is significant in that it recognises that the athlete's lack of bargaining power affects the quality of her consent. At the same time, the decision places a higher threshold on the quality of consent required to waive the right to annul/set aside the CAS award than on the consent to arbitration itself.

78. The Swiss Federal Tribunal has consistently held that the CAS is an independent and impartial body despite several challenges based on the ground that sports organisations seem to enjoy influence over the CAS through the ICAS.[58]

(e) The Claudia Pechstein dispute

79. The fastest woman on the ice, the German speed skater and five-time Olympic gold medallist, Claudia Pechstein is also famous in the for the jurisprudence her dispute with CAS has created.

80. Pechstein's blood samples obtained during a routine doping control test, indicated an abnormal level of red-blood cells. The International Skating Union

that the test results indicated that she was guilty of doping. The ISU banned Pechstein for 2 years in 2009.

81. The ruling was appealed before the CAS where the athlete raised a defence that she had a blood disorder which caused the irregular results. The CAS however, did not find merit in her defence and upheld the ISU's ban as being legitimate.

82. The CAS award was challenged by Pechstein before the Swiss Federal Tribunal under the grounds provided in Article 190 of the Swiss Federal Statute on Private International Law. The Federal Tribunal dismissed the challenge, holding that the CAS award did not meet the thresholds for annulment and was a legitimate award.

83. Pechstein then moved the dispute to the courts of Germany. She filed a case before the district court of Munich (Landgericht Munchen I), her hometown, on the ground that the Swiss Federal Tribunal had unfairly dismissed her challenge to the CAS award, which was itself perverse. The case was in the nature of a claim for damages against the ISU and the German apex skating body, for her substantial loss of earnings resulting from its ban at the peak of her athletic career. The Munich District Court declined to interfere with the award, resulting in its judgement being appealed before the Munich Higher Regional Court (Oberlandesgericht Munchen).

84. It is at the Munich Higher Regional Court ("**MHRC**") that Pechstein's case found relief. The German Code of Civil Procedure 2005 contains a provision similar to Section 8 of the Indian Arbitration and Conciliation Act 1996.[59] The provision requires that a German Civil Court refer any dispute that is covered by a valid arbitration agreement to arbitration and not hear the dispute on merits.

85. The MHRC however held that it could validly exercise jurisdiction over the dispute because the arbitration agreement was invalid. The reason the agreement was invalid was that the consent of the athlete to arbitrate disputes was freely given. The court used German competition law to rule that the ISU enjoyed a complete monopoly over professional skating and a professional athlete enjoyed very little bargaining power against it. It observed that the athlete faced a choice of remaining an amateur and forgoing a livelihood as a professional skater or assenting to the ISU rules providing for arbitration. The Court ruled that this practice was an abuse of dominant position by the ISU, rendering the athlete's consent to arbitrate void.

86. The MHRC then examined the structure of the CAS, finding that CAS provided a list of potential arbitrators that an athlete could choose from. This list was prepared by the International Council for Arbitration for Sport ("**ICAS**"). The Court

found that ICAS comprised disproportionately of members who were nominated by ISFs like the ISU and organizations like the IOC whose members were not individual athletes, but ISFs.

87. This imbalance in the power to nominate an arbitrator was an abuse of market power as organizations like the ISU, which enjoy a monopoly, have an obligation under EU competition law to fulfil a 'special responsibility' to ensure the functioning of a free market.

88. The MHRC's ruling understandably caused a stir in the sports arbitration sector and was appealed before the German Supreme Court (the Bundesgerichtshof). The Supreme Court weakened the MHRC's judgement by holding that:

(a) Competition Law was applicable to the matter; and

(b) The ISU enjoyed a dominant market position.

However:

(a) The athlete had voluntarily assented to the ISU regulations and thereby consented to arbitration; and

(b) The design of the CAS was not so flawed as to merit an intervention by the Supreme Court.

89. After the Supreme Court's ruling in her case, Pechstein filed a petition before the German Constitutional Court alleging a violation of her fundamental rights under the German Constitution, which is pending as of May 2020.

90. Another petition was filed by Pechstein before the European Court of Human Rights alleging that her right to a fair trial had been violated on the two main grounds that CAS was not an independent body and that the procedure of trial before CAS was inherently unfair.

91. The ECHR tagged her case with that of a footballer, Adrian Muttu who had filed a similar petition against the CAS. The ECHR framed the following issues in the case:

(a) The preliminary issue of whether the athlete has waived her right to a fair trial under Article 6 of the European Convention on Human Rights by assenting to the arbitration before the CAS;

(b) Whether the CAS was an independent and impartial tribunal established by law; and

(c) Whether the procedure followed by CAS was inherently unfair, specifically in relation to its refusal of a public hearing despite the athlete's request.

92. The ECHR followed a reasoning that was similar to the MHRC while addressing the preliminary issue of a waiver of her rights under Article 6. It found that the consent of the athlete was not freely given as ISU was the dominant body in the sport of skating and the only alternative to consenting to the arbitration was to refuse the clause and give up professional skating. Therefore, the athlete's rights under Article 6 could not have been waived.

93. On the issue of the independence of CAS, the ECHR disagreed with Pechstein and held that the CAS was independent and impartial. Examining the issue of the composition of the tribunal it noted that the athlete was presented with a list of potential arbitrators and was free to appoint one of her choice. Further, it noted that her challenge was against the President of her tribunal but was unsubstantiated.

94. On the final issue of a public hearing however, the ECHR held in favour of Pechstein. It held that the CAS refused a public hearing despite a specific request, without providing any reasons. Switzerland was directed to pay 8000 euros as compensation.

95. The Pechstein dispute remains pending before the German Constitutional Court. However, the rulings so far lead to some important conclusions:

(a) That the consent of an athlete to arbitration before the CAS is not universally regarded as being freely obtained;

(b) That Courts in several jurisdictions, especially in Europe will apply their anti-trust laws while examining a matter; and

(c) That the human rights of the athlete guaranteed under applicable international conventions such as the European Convention on Human Rights are not waived by virtue of the arbitration agreement and must not be violated during a CAS proceeding.

(f) Global precedent

96. The issue of CAS arbitrations being consented to by virtue of membership in a sporting organisation has been considered across the globe in several jurisdictions.

97.Recently the Belgian courts had occasion to examine the arbitration clause contained in the FIFA Statute (2015 edition) which applied to:

(a) Members: Associations (NSFs) from different nations that governed the sport of football in their country;

(b) Confederations: A group of associations recognised by FIFA that belong to

(c) Club: A member of a member association (referred to hereinabove) or of a league recognised by an Association that enters at least one team in a competition;

(b) Player: any football player licensed by an Association;

(c) Officials: Coaches, Referees, technical personnel, club employees, etc.; and

(d) Licensed match agents

98. A dispute surrounding a violation of the 'third-party ownership' rules of FIFA by a Belgian football club, RFC Seraing and the third-party funder Doyen Sports, resulted in FIFA's internal Disciplinary Committee imposing a fine of 150, 000 CHF and a ban on transfers for four transfer windows. The club appealed the decision to FIFA's appellate body unsuccessfully.

99. The decision of FIFA's appellate body was appealed to the CAS. The CAS found that the club had in fact violated the rules governing third party ownership and refused to set aside the decision of FIFA's disciplinary body.

100. Simultaneously, RFC Seraing and Doyen instituted suits in the district courts at Brussels and Liege. These matters were eventually heard by the Belgian Court of Appeal.[60] The Court noted that RFC Seraing had assented to the arbitration agreement through its membership in the Royal Belgian Football Association (the Belgian NSF), which in turn had obligated its members to assent to the FIFA Statute. The Court used the New York Convention on the Recognition and Enforcement of Foreign Awards and the UNCITRAL Model arbitration law to examine the arbitration clause. It held that the requirement of a 'specific legal relationship' between the parties was not met. This was because Article 66 of the FIFA Statute 2015 provided for arbitration of disputes between members, confederations, clubs, players, officials or licensed match agents, without specifying the kind of disputes that would be covered under the article. The Court held that the vague nature of the article meant that there was no specific legal relationship created between RFC Seraing and FIFA and thus the arbitration agreement was void. It is pertinent to note that India has based the Arbitration and Conciliation Act, 1996 on UNCITRAL Model Law

101. It is pertinent to note that the FIFA Statute 2019 edition contains the same arbitration clause and obligations on members and confederations to recognise the 'jurisdiction and authority of CAS and give priority to arbitration as a means of dispute resolution'.

102. The Spanish Supreme Court has also ruled that the consent to a CAS arbitration in doping disputes is not free consent but rather a sin qua non to

in a challenge against a ban and a disqualification of the title won by a Spanish cyclist for an alleged anti-doping rule violation. The Supreme Court reversed the positive ruling restored the athlete's title and ordered compensation.[61]

(g) Procedure before the CAS

103. Since the CAS acts as both a forum of first instance and as an appellate forum, it has prescribed distinct procedures for each of these types of arbitration.

104. The CAS Procedural Rules recognise that a CAS arbitration may arise from the following:

(a) An arbitration clause contained in a contract or regulations;

(b) A later arbitration agreement

(c) A decision rendered by:

(i) A federation;

(ii) An association; or

(iii) A sports related body

Where the statute or regulation of such bodies or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)

105. An arbitration before the CAS broadly follows the same stages as a commercial arbitration, viz:

(a) Notice of Arbitration and Response

(b) Appointment of the tribunal

(c) Statement of Claim and Defence

(d) Exchange of evidence: witness statements and replies, discovery, etc.

(e) Final Hearing: opening submissions, cross-examination and closing submissions.

(f) Rendering of the award and enforcement.

A. Ordinary Arbitration procedure

106. An arbitration before the CAS that arises in its capacity as a forum of first instance, requires certain procedural compliances prior to the request for arbitration:

(a) A request must be filed before the CAS Court Office with:

(i) The coordinates of the Respondent;

issues of determination;

(iii) A copy of the arbitration agreement or parent contract/regulation containing the agreement;

(iv) Relevant information about the number and choice of arbitrators.[62]

(b) The Court Fee of 1000 CHF must be paid as an initial fee at the CAS Court Office at the time of filing a request for arbitration. This amount is non-refundable and is forfeited if the procedure is terminated before the tribunal is appointed.[63]

107. The CAS Court office, after receipt of the arbitration agreement and the above application, the request is communicated to the Respondent with a direction that they file an answer containing:

(a) A brief statement of defence;

(b) A defence of lack of jurisdiction, if any;

(c) A counterclaim, if any[64]

108. The Respondent is usually subject to a time limit to provide the answer as well as relevant information about the number and choice of arbitrator. It can however, request that the time limit for the answer be extended until the Claimant pays the advance costs as the CAS Court Office may estimate.[65] The objection to the jurisdiction of the CAS Tribunal shall be decided by it as a preliminary issue or in the award on merits.

109. The CAS Procedural Rules permit the consolidation of procedures if multiple disputes are pending before the CAS having been referred from the same arbitration agreement.

110. The arbitrators in CAS are chosen from a list of arbitrators maintained by CAS. These arbitrators have been chosen for their expertise by the ICAS. In case the parties do not agree on a method of appointment:

(a) The President of the Division appoints the sole arbitrator; and

(b) In case of a 3-member tribunal, the parties each appoint an arbitrator and the party-appointed arbitrators appoint a presiding arbitrator for the tribunal. If a party fails to appoint an arbitrator of their choice within the stipulated time limit, the President of the Division carries out the appointment.

111. The CAS Procedural Rules also provide for the joinder of parties as well as for intervention of third parties into the arbitrations.

conciliation.[66] It also maintains strict confidentiality unless parties expressly waive the same.[67] It is unclear how in an anti-doping dispute, the CAS will react to a demand for a public hearing by the athlete and an objection to the same by the NSF/WADA. It is presumed that the tribunal will hear the parties and pass an appropriate reasoned procedural order on the issue.

113. Parties are permitted to present written submissions of their pleadings. There are generally two rounds of pleadings, the first being the statement of claim and its response and the second being a reply and a second response. Evidence that is documentary is expected to be produced along with the submissions. Production of evidence after an exchange of pleadings is permitted by an order of the tribunal or mutual agreement. Parties are expected to include their list of witnesses in their written submissions, these include both witnesses of fact and expert witnesses.

114. On hearings, the rules provide that:

(a) The CAS attempts to limit the number of hearings in the arbitration. As a general rule, there is one hearing where the tribunal hears the parties and witnesses. It also hears the final oral arguments of the parties. The Claimant is heard first on the above.

(b) The hearing is transcribed and parties bear the cost of an interpreter should one be required.

(c) Hearings can be conducted by video-conference, tele-conference, in-person or a combination of these.

(d) Witnesses are subject to perjury sanctions and the tribunal also reserves the right to disqualify a witness for irrelevant testimony.

(e) The Parties are not permitted to file written submissions after this hearing unless specifically permitted by the tribunal.

115. The CAS tribunal's evidentiary procedure contains the following key concepts:

(a) A request for documents allegedly in the possession of the other party along with reasons for its relevance and belief of its existence;

(b) The tribunal may order the production of additional documents, examination of witnesses, experts or any other procedural step for which the parties shall bear the costs;

(c) The Tribunal shall consult the parties on the terms of reference of an expert witness appointed by it, disclosure of the witnesses' antecedents shall also be invited by the Tribunal.

116. An award by the CAS must be accompanied by reasons even if they are brief. Awards are signed by the arbitrators and sometimes operative portions may be communicated to the parties before the detailed final award is released.

B. Appeal Arbitration Procedure

117. The CAS hears appeals from the decisions of other tribunals/disciplinary bodies established under the rules of various sporting bodies. It also hears appeals from national anti-doping bodies.

118. The CAS Procedural rules seem to encourage the finality of awards by forums of the first instance, in that they provide a 21-day limitation period in the absence of any time let under the rules/statutes that the appeal arises under.

119. The procedure for appointment of arbitrators is similar to the procedure in original arbitrations, in that, should the arbitration agreement not specify a method of appointment, the President of the Division shall appoint the arbitrators.

120. The Appeal brief (Statement of Appeal) shall be filed within ten days of the expiry of the period of limitation to file the appeal. In addition to the facts and arguments of the appellant, it shall contain exhibits and specifics of evidence proposed to be led. If the appellant fails to meet this time limit, the appeal is deemed to have been withdrawn.

121. The statement of appeal is communicated to the Respondent and the authority/tribunal whose judgement/award is under appeal. The rules provide for consolidation of pending appeals arising from the same proceeding.

122. The procedure for the filing of the Respondent's answer to the Statement of appeal shall contain:

(a) A statement of defence;

(b) An objection to jurisdiction, if any;

(c) Specifics of evidence proposed to be led

The rules also provide that the above must be filed within 20 days from the receipt of the grounds of appeal. The tribunal will proceed with the appeal in the absence of the Respondent's answer if it fails to make the above submission.

123. The scope of the CAS's review is interesting. It is much wider than the traditional scope of an appellate court in a common law jurisdiction, in that the tribunal can:

(a) Review the facts;

(b) Review the application of law;

(c) Replace the decision with a new decision;

(d) Refer the decision back to the authority/tribunal

(e) Annul the decision.

The CAS adopts the same hearing procedure for hearings as it does for original arbitrations.

124. The law applied shall be as specified in the applicable statute/rules that govern the award/order in appeal. In the absence of such reference, the law of the country where the authority/tribunal is domiciled shall be applied.

125. The procedure for awards is also substantially the same except that the Secretary General of CAS has the power to review and award and 'draw the attention of the tribunal to fundamental issues of principle'. This provision is designed to ensure a high quality of the awards, given that they are final. However, based on the context, it may become a ground to challenge the independence of the tribunal in a domestic court system or during enforcement proceedings.

(h) Enforcement of CAS awardse

126. The enforcement of a CAS award is a novel concept in India. This is primarily due to the fact that Indian disputes that have been referred to CAS have been anti-doping matters or disputes around the recognition of an NSF or a similar rule violation.

127.These disputes are also predominantly at an appellate stage and the nature of relief is an action to be taken by the NSF, i.e., suspension / setting aside a suspension. These facts make enforcement proceedings superfluous as most parties to the CAS arbitrations have complied.

128. It is also pertinent to note that an NSF is usually obligated to comply with CAS awards as they are bound by the rules of the International Sports Federation of the sport. For instance the All Indian Football Federation is obligated under the FIFA Statute 2019 to recognise CAS awards and comply.

A. Challenge based on the nature of the dispute

129. CAS awards are essentially Switzerland-seated arbitral awards enforceable under the New York Convention. India is a signatory to the convention and has notified Switzerland as a reciprocating territory.

130. The issue however arises from India's express reservations with the Convention's provisions, which are broadly that:

(b) The above territories shall also be signatories to the convention; and

(c) The award should arise from a defined legal relationship that is regarded as commercial under Indian law.

131. The above reservations have been codified under Section 44 of the Arbitration and Conciliation Act 1996, which defines a 'foreign award' as – 'An arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960'.

132. This definition presents a problem as relationships between an athlete and an NSF are not commercial though there may be facets of commerce to the relationship. This is an issue of interpretation that is as yet, unsettled in Indian law. In a recent decision, the Delhi High Court while considering whether the relationship between a lawyer and client was commercial, held that – *'The term commercial has to be interpreted liberally consistent with its literal and grammatical sense'* and that *'transactions relating to services for valuable consideration would be a commercial legal relationship and would be covered by Section 44 of the Arbitration and Conciliation Act, 1996.'*

133. It remains to be seen how the courts will interpret a challenge to the enforcement of an arbitral award on this ground.

B. Challenge under Section 48 of the Arbitration and Conciliation Act 1996

134. Apart from the above, the usual grounds under Section 48 of the Arbitration and Conciliation Act 1996 are available to a party seeking to resist the enforcement of the CAS award. These include:

(a) The parties were under some incapacity, or the arbitration agreement was not valid under the applicable law;

(b) The party was not given proper notice of the commencement of the arbitral proceedings;

(c) The award exceeds the scope of reference;

(d) The composition of the tribunal or its procedure was not in accordance with the arbitration agreement;

(e) The award has not yet become enforceable or has been set aside by the courts of the seat.

135. Additionally, the award will not be enforced if the Court finds:

(d) The enforcement of the award is contrary to India's public policy.

136. Enforcement can be refused on the ground of being contrary to public policy only when:

(a) The making of the award was tainted by fraud or corruption

(b) The award is in contravention with the fundamental policy of Indian law; and

(c) The award is in conflict with the most basic notions of morality or justice.

137. It can be anticipated that in anti-doping matters in particular, a compelling argument can be made that an average Indian athlete cannot afford the costs of the CAS arbitration resulting in either a loss of a right to appeal or an ex-parte appeal by the National Anti-Doping Agency. A penal consequence such as suspension being imposed despite the athlete not having access to an appellate stage, can be interpreted as both a contravention of the fundamental policy of Indian law and being in conflict with the basic notions of morality or justice.

C. Judicial Interference in India

138. As with any form of arbitration, sports arbitrations also face a degree of interference by the courts in India. This interference originates from courts exercising different types of jurisdictions.

139. The amenability of an NSF to writ jurisdiction has been affirmed by the Delhi High Court in recognition of the public functions that NSFs perform despite usually being voluntary organisations registered as societies under the Societies Registration Act 1860.[68]

140. In Public Interest Litigation, the Delhi High Court also examined the legislative competence of the Union to regulate the functioning of NSFs considering that 'sports' falls within the State List under the Seventh Schedule of the Constitution of India.[69] The Court held that since foreign affairs including India's participation in international events is governed by the Union, it had the power to regulate India's participation in these events through the NSFs.[70]

141. The NSFs are recognised under the National Sports Development Code 2011 which provides criteria for such recognition. It is only when an NSF is recognised by the Ministry of Sports and Youth Affairs has the right to use the name 'India', use the national emblems and represent the country. The Code also obligates the NSFs to comply with the regulations of the International Olympic Committee.

142. A citizen can approach the Supreme Court of India under Article 32 of the Constitution seeking a writ to remedy a violation of her fundamental rights.A citizen may also approach the High Court under Articles 226 and 227 for remedies

against a violation of her fundamental rights as well as legal rights. The jurisdiction of the High Courts under these articles is considered wider than the Supreme Court's jurisdiction under Article 32.

143. High Courts have consistently entertained writ petitions from athletes and office-bearers of sports organisations. Some of these writ petitions have been filed in public interest, seeking for instance, the incorporation of a CAS arbitration clause into the agreements between athletes and sports bodies.[71]

144. The right of an athlete to approach the High Court in its writ jurisdiction has been recognised by the Delhi High Court in the context of an anti-doping dispute.[72] The Court held, in a challenge against an order of the ADAP, that the order was a matter of sports administration and that it would interfere under Article 226 only if the order was *'mala fide, capricious or otherwise violates constitutional guarantees.'*

145. The penalties that athletes face include a complete ban on participation in any form of the sport. This effectively cripples the athlete's livelihood, the right to which is protected under Article 19 of the Constitution. Indian athletes often come from challenged backgrounds and an appeal before the CAS is prohibitively expensive. The harsh penal consequences imposed by the anti-doping bodies coupled with a lack of financial capacity to sustain an appeal can be a compelling argument for the exercise of the court's jurisdiction under Articles 32, 226 or 227.

B. Types of CAS disputes

146. Since its inception there have been around 16 reported awards passed by the CAS that have originated from India. They fall broadly under the following classes:

(a) Anti-Doping Appeals

147. The Indian disputes before the CAS consist predominantly of appeals against rulings of the ADAP. There have been around 11 disputes that fall within this category.

148. Both the WADA and ISFs have instituted appeals in the past against the decisions of the ADAP which find basis in the WADA Code as well as the ADR 2015.[73] These appeals seem to follow a trend:

(a) The athlete is found to have committed an anti-doping rule violation;[74]

(b) The ADDP rules that there were extenuating circumstances such as the athlete's youth, lack of education, lack of awareness, challenged background etc. that mitigated the athlete's culpability. The ADDP imposes a reduced

(c) The ADAP upholds this approach by the ADDP, also taking note of these circumstances;

(d) WADA appeals before the CAS on the ground that the principle of strict liability must be applied in these instances and that the athlete's penalties must be increased.

In most of the disputes that follow the above timeline, the CAS has found that the ADAP has not applied the principle of strict liability and has set aside its decisions and imposed harsher penalties on the Indian athletes in question.

149. In a landmark case, which was an appeal against the decision of the ADAP, the athlete notably, contended that the National Dope Testing Laboratory did not comply with WADA's International Standards for Testing.[76]

150. It would seem that there appears to be a disconnect in the approach of the CAS and that of the ADDP and ADAP. This seems to stem from the members of the ADDP and ADAP being more attuned to the unique situation of India's athletes. Several athletes come from underprivileged backgrounds with very little formal education. Compounding their plight is the fact that very little awareness is spread about the prohibited substances, which are part of commonly retailed medicines, supplements and cosmetics in India.

(b) Recognition of the NSF

151. One of the disputes before the CAS is between two organisations that claim to the NSF for hockey in India. These are the Indian Hockey Federation ("**IHF**") and Hockey India ("**HI**"). IHF, the erstwhile NSF for hockey, was replaced by the newly created HI which received recognition from the Ministry of Youth Affairs and Sports as well as the ISF for hockey, the International Hockey Federation.[77]

152. The IHF brought a challenge to the recognition of HI before the CAS, naming both the International Hockey Federation and HI as respondents. The CAS declined to interfere with the ISF's decision to grant recognition to HI, noting that the same was in accordance with the ISF's regulations. The CAS held that it was not required to opine on whether IHF's derecognition as an NSF by the Ministry was valid.

(c) Challenging ISF regulations

153. In a landmark dispute the CAS ruled on the International Association Athletes Federations ("**IAAF**") regulations on Hyperandrogenism.[78] The challenge was brought by Ms. Dutee Chand a renowned Indian athlete.

154. The athlete was tested for the presence of androgens in her body. These are a

set of hormones associated with masculinity. When it was found that her androgen levels were beyond the threshold prescribed in the IAAF Hyperandrogenism Regulations, she was prevented from participating in athletics events as a woman athlete.

155. The Sports Authority of India, under whom the athlete had been training, supported the athlete's challenge of the regulations before the CAS. It was an accepted position of fact that the androgens in the athlete's body were naturally occurring and not a result of doping.

156. The athlete contended that the Hyperandrogenism Regulations violated the non-discrimination principle of the International Olympic Charter by discriminating against her on the basis of a natural trait, i.e. naturally occurring androgens. Further, that the test of androgen levels on the premise that it affected athletic performance had no basis in science. The athlete also questioned the proportionality of the regulations, stating that the woman athlete was made to suffer stigma, loss of self-esteem, undergo medical procedures with harmful side effects, etc. as a result of the regulations.

157. The CAS ruled that it could not accept the Hyperandrogenism Regulations as the IAAF failed to discharge the burden of proving inter alia:

(a) That testosterone was the sole basis of enhanced performance;

(b) The degree to which performance was affected by testosterone levels; and

(c) That the Hyperandrogenism Regulations did not discriminate against women athletes with naturally occurring androgens.

The CAS, in an interim award, suspended the Hyperandrogenism Regulations for a period of 2 years, which time the IAAF was supposed to use to garner scientific evidence for the basis of the regulations, failing which they would be declared void.

(d) Violations of competition rules

158. The violation of competition/league rules that are usually prescribed by the ISF governing the sport, leads to proceedings in the ISF's internal disciplinary bodies. The appeals from these decisions often lie before the CAS.

159. An instance of such an appeal by an athlete is that of Mr. Cyril Sen, who was alleged to have violated the International Table Tennis Federation (ITTF) regulations by making certain remarks against a referee. The CAS ruled in favour of the athlete on the ground that the allegation had not been substantiated with sufficient evidence.[79]

160. The CAS has however declined to exercise its jurisdiction in a matter where

two squash players challenged the Asian Squash Federation Championship Regulations. The CAS held that the Article 1 of the CAS Ad-Hoc rules permitted disputes under Article 34 of the Constitution of the Olympic Council of Asia to be referred to the CAS. The said Article 34 provided this right exclusively to athletes. The CAS held that since the appellants admittedly did not fall within this definition, they lacked the ability to bring a challenge to the competition rules.[80]

(e) Disputes arising out of transfer of players

161. A multitude of CAS awards concerns disputes arising out of transfer of players among sports clubs or between players and an NSF/ISF. These disputes range from outstanding transfer fees and compensation claims to the rules governing the transfer of minor players.

162. An instance of such an award is when following an agreement to transfer a player, Clube Atletico Mineiro refused to pay the transfer fee to Huachipato SADP. Its refusal was on the ground that it was facing financial difficulties and a decision aggravating its situation was contrary to the principle of proportionality. The club also contended that it was not a 'repeated offender' under Article *12bis* of the FIFA Regulations on the Status and Transfer of Players ("**RSTP**"). The ruling favored Huachipato, which argued that financial difficulties did not constitute a ground for payment defaults.[81]

163. The issue. In one such matter between a minor player, John Hilton and FIFA, the question was whether transfer of the minor could be sought on the ground that his parent moved to a different country 'for reasons not linked to football'. This was an exception provided in Article 19 of the RSTP.[82]

164. It is true that RSTP provisions are designed to protect interests of minor players.[83] However, the panel ruled, after examining the timeline of movement and the surrounding circumstances, that Hilton was not entitled to a transfer since the movement of his parent was strongly motivated by football. This shows that the aforesaid exception seems to be absolute in nature.

(f) Challenging decisions on eligibility and selections

165. Decisions challenging the non-selection of a player on the grounds of arbitrariness and injustice are often appealed before the CAS. It is argued that the selection processes of various Committees which undertake selections for events like the Olympics are non-transparent, improper and consequently, questionable.

166. In a recent dispute brought by against the Lebanon Olympic Committee ("**LOC**"), it was contended that the LOC did not communicate the criteria governing the selection process to the Applicant skier. The skier asserted that this non-communication resulted in his rejection for the PyeongChang Olympic

Games. The ruling favoured the LOC owing to a circular, the presence of which should have been known to the skier. However, in a first, the panel acknowledged that the lack of transparency in selection processes was a real problem and also that LOC members were issuing contradictory and misleading statements, the remedy for which lay elsewhere.[84]

167. In another matter, the CAS examined the question of bias against athletes in the selection process on the basis of their family affiliations rather than criteria relating to sport-performance.[85] The applicant contended that her selection was rejected impermissibly and arbitrarily even though she possessed the required credentials. While the CAS found that it lacked jurisdiction, it went on to expound its views on the merits. Herein, the CAS once again decided on the facts of the case that there was no bias. However, it endorsed the view that there is an urgent need to increase transparency and establish clear criteria for selection to ensure that the process is just and reasonable.

PART IV: CONCLUSION

168. The growth of the sports sector has been exponential over the last decade. We have established over the course of this chapter that the growth of the industry has led to a large number of disputes that have been referred to arbitration for resolution.

169. These disputes have been classified on the basis of the parties' consent to arbitration. A bulk of the commercial disputes in the sports industry result in commercial arbitrations. Due to their confidential nature, the number of these disputes can only be estimated from the number of related court proceedings.

170. These arbitrations follow the usual stages of a commercial arbitration and are enforced in the same manner as a commercial arbitral award. Since the NSFs in a sport are usually in a position to distribute largesse in the form of approvals, permits and broadcasting rights, several commercial disputes feature connected court proceedings, including writ petitions and suits.

171. Arbitrations where the consent of one of the parties is derived however, are distinct in their nature from commercial arbitrations in the sector. These awards are not commercial in common parlance and deal with disciplinary and administrative aspects of the sport. Their enforcement presents unique challenges in India as they are not awards arising out of a relationship that is considered purely commercial.

172. These arbitrations are predominantly conducted before the CAS and follow the applicable CAS procedure, whether appellate or original. A majority of the Indian disputes before the CAS have been appeals from anti-doping rulings by the

successful.

173. A key feature of arbitrations before the CAS is the persuasive value a ruling has as precedent in a subsequent arbitration. This has led to a development of a unique jurisprudence based almost entirely on arbitral awards. The decisions of the Swiss Federal Tribunal are also important in this context as it is the sole court before which an application to set aside a CAS award may be filed.

174. Indian athletes face several critical difficulties in taking advantage of the CAS regime as a result of their lack of awareness and lack of financial ability. If more Indian athletes are put through a comprehensive awareness program that deals with anti-doping regulations, commonly occurring forms of prohibited substances and procedure to avail legal aid in their CAS appeals, they will be able to effectively participate in the CAS regime.

PART V: ANALYSIS OF SIGNIFICANT CASES

(I) World Sport Group (India) Private Limited v BCCI

A. Background

1. This dispute surrounds the World Sport Group (Mauritius) Private Limited ("**WSG-Mauritius**"), MSM Satellite (Singapore) Private Limited ("**MSM**") and the Board of Control for Cricket in India ("**BCCI**").

2. The BCCI and MSM entered into a contract for broadcasting rights of the Indian subcontinent in relation to the Indian Premier League ("**IPL**"). On 14 March 2009, after the first IPL season, the contract with MSM was unilaterally terminated by BCCI on the ground that the contract had been materially breached by MSM. Due to the aforesaid termination, BCCI started negotiations with WSG-Mauritius for the media rights in India.

3. Aggrieved by this termination notice, MSM invoked the arbitration clause and filed a petition under section 9 of the Arbitration and Conciliation Act 1996 (the "**Act**") for injunction on 14 March 2009. This injunction was to prevent BCCI from acting on its termination letter and preventing it from granting rights under the said agreement to any third party.

4. Before the injunction could be granted, BCCI under Mr. Lalit Modi, pursuant to the negotiations with WSG-Mauritius, entered into another media rights agreement with WSG-Mauritius on 15 March 2009. Under this agreement, all media rights for the Indian subcontinent were given to WSG-Mauritius, subject to the condition that they would find a sub-licensee within 72 hours because they did not have a broadcasting channel of their own.

5. BCCI declared that any company interested in obtaining the broadcasting rights could approach WSG-Mauritius. WSG WSG-Mauritius offered to relinquish these rights again to MSM in exchange of a facilitation fee so that the latter's position could be restored. Consequently, a facilitation agreement was signed by the parties. Under the agreement, MSM was to pay WSG-Mauritius a facilitation fee of Rs. 425 crore for the said rights. On the basis of this representation, an agreement between BCCI (through Mr. Lalit Modi) and MSM was concluded for the said rights on 25 March 2009.

6. Over the next two years, part payments were made by MSM to WSG-Mauritius and the IPL was conducted. However, in 2010, the conflict between Lalit Modi and the IPL Committee occurred and MSM realized that the facilitation agreement was voidable because both BCCI and WSG-Mauritius had acted fraudulently. Thus, *first*,

terminated the contract with WSG-Mauritius.

(a) MSM claimed in a press statement that the termination was on the ground that the facilitation agreement was fraudulent and therefore, voidable.

(b) BCCI claimed that it was unaware of the negotiations and the agreements signed on 25 March 2009 and the alleged wrongdoings were committed by him in his personal capacity.

(c) WSG-Mauritius claimed that its contract with BCCI could not be terminated because all the parties were aware of the negotiations and agreements between the three parties.

7. Subsequently, WSG-Mauritius invoked the arbitration clause in its agreement with BCCI and filed a suit for interim relief so as to prevent BCCI from creating third party rights in respect of the media rights. This is the decision discussed herein.

8. This case is an appeal brought before the Bombay High Court by the Indian subsidiary of WSG-Mauritius against the BCCI under section 9 of the Act. The Single Judge in the impugned decision had held that the injunction should not be granted on the ground that the petitioner failed to argue a fool-proof case. WSG-Mauritius filed an appeal and sought to prevent the BCCI from granting the rights under the agreement between them to a third-party.[86]

B. Parties' Submissions

(a) WSG-Mauritius

9. Burden to establish a foolproof case: It was contended that it was not necessary to establish a foolproof case to claim interim relief under section 9 of the Act.

10. Knowledge and consent of BCCI: It was submitted that the documents on record indicated that the agreement in question between BCCI and WSG-Mauritius had been performed by BCCI for two IPL seasons from 2008-10. Further, it was submitted that the agreements dated 25 March 2009 were within the knowledge of the BCCI as Mr. Lalit Modi participated in the negotiations and concluded agreements. An affidavit of a Secretary of the BCCI was produced to establish this knowledge.

11. Failure to establish fraud: It was contended that the notice had been issued to the Petitioner on the ground that WSG-Mauritius had misrepresented to MSM-Satellite that the former possessed media rights as per its agreement with BCCI. The ground of misrepresentation or fraud could only succeed if it was shown that the same resulted in the party's consent to the agreement. Thus, the amount of Rs. 425 crore due from MSM under the facilitation agreement was not an amount

12. Obligation to pay WSG-Mauritius: Clause 27.5 of the agreement between the parties provided that if MSM failed to make any payment to WSG-Mauritius, BCCI would either terminate its agreement with MSM for Indian media rights or pay the money/provide bank guarantee to WSG-Mauritius for the unpaid amount. Since the agreement is valid, BCCI has an obligation to make payment as it failed to terminate the contract when MSM did not pay the full facilitation fee.

13. On these grounds, WSG-Mauritius claimed that a prima facie case for injunction had been established.

(b) BCCI

14. Fraud: The Respondent contends that the facilitation agreement between MSM-Mauritius and MSM was vitiated by fraud because it was concluded without the knowledge of BCCI. Thus, the recission is proper and Clause 27.5 of the agreement also would not be applicable. According to the BCCI, if WSG-Mauritius had been profiting from the agreement, there was no reason for the BCCI to make good that profit if MSM failed to pay.

15. Jurisdictional limitation: It was submitted that the existence of fraud was to be determined by the arbitral tribunal and not by the Court.

16. On these grounds, BCCI claimed that the request for injunction be rejected and decision of the Single Judge be upheld.

C. Judgment

17. Knowledge of the BCCI: As to the knowledge and consent of the BCCI, the Court ruled in favour of WSG-Mauritius by holding that the BCCI could not have lacked knowledge about the said agreement. In fact, Mr. Lalit Modi's act was ratified by the BCCI as shown by the affidavit. Two successful seasons were conducted under this agreement.

18. Fraud: The Court noted that as per section 17 of the Indian Contract Act 1872, fraudulent acts of a party do not render the agreement voidable if conduct of the other party was such that it lacked ordinary diligence, thereby constituting consent. Mr. Lalit Modi was representing the BCCI in this matter in official capacity because his acts were later ratified by BCCI. While a prima facie case was made out, the Court could not conclude that fraud was committed by WSG-Mauritius.

19. Since prima facie case of fraud for interim injunction was made out by the Petitioner, the injunction was, therefore, granted.

D. Analysis and Conclusion

20. This case is not the only matter that arose out of this factual scenario. Another

MSM under section 9 of the Act.[87] This matter concerns the termination by MSM of the agreement with WSG-Mauritius when it learnt that the facilitation fee under the agreement had been fraudulently obtained.

21. An arbitration was pending before the International Court of Arbitration concerning the same dispute and MSM sought an injunction against these proceedings. Since this was granted by the Bombay High Court,[88] WSG-Mauritius sought that the injunction be set aside in its appeal. The appeal was allowed and the injunction order was set aside.

22. When this matter between WSG-Mauritius and MSM was eventually decided by the International Court of Arbitration in November 2015, WSG-Mauritius was ordered to pay to MSM USD 27.9 million and reimburse past proceeds in relation to the contract.

23. Disputes surrounding unlawful termination of agreements are not uncommon in sports. This matter may be exceptional to the extent that allegations of fraud formed the nucleus of the disputes. However, it does throw light on the fact that Indian sports are affected by corruption to a great extent, and this corruption creates myriad commercial disputes.

(II) Sportz and Live Entertainment Private Limited v Volleyball Federation of India

A. Background

1. Sportz and Live Entertainment Private Limited ("**Sportzlive**"), a company operating in the area of investing and creating sports intellectual property in India instituted the present matter. The Volleyball Federation of India ("**VFI**") is the governing body of volleyball in India.

2. Sportzlive signed an agreement with the VFI for obtaining the exclusive right to set up, organize, manage, market and operate the Indian Beach Volleyball Leagues ("**IBVL**") for men and women ("**the agreement**"). The said agreement was signed on 2 January 2016 by the President of the VFI, Mr. Chaudhary Avadhesh Kumar ("**Mr. Kumar**"). As per the agreement, Rs. 9.54 crore was paid by Sportzlive to the VFI by way of demand drafts.

3. The agreement precludes the Respondent from granting any approval, consent or permission relating to the establishment or operation of the IBVL to any third party. A dispute arose between the parties as to the validity of this agreement because it was contended by the VFI that Mr. Kumar, who signed the agreement was not competent to do so. According to the VFI, Mr. Kumar had represented to the Core Committee of the VFI that the rights to organize the IBVL were not

Core Committee finalized the grant of rights to conduct the IBVL to a third party, Baseline Ventures (India) Private Limited.[89] Mr. Kumar was made part of this committee. As a result, a dispute arose between Sportzlive and the VFI for the exclusive rights of the former. Sportzlive claimed its rights under the agreement vide letter dated 26 October 2016 and called upon the VFI to place the amount already paid by it to the VFI (Rs. 9 crore) in a no lien escrow account in order to protect its interests.

4. The arbitration clause was invoked and this petition was filed by Sportzlive against the VFI under section 9 of the Arbitration and Conciliation Act 1996 seeking a direction to prevent the VFI from granting the rights in the agreement to any third person. Sportzlive also sought to stay any rights that may already have been granted in this respect and to maintain status quo, that is, to prevent the IBVL from happening.

B. Parties' Submissions

5. The question before the Court was whether the interim injunction could be granted to Sportzlive on the ground that its rights under the agreement needed to be preserved.

(a) Sportzlive

6. Terms of the agreement: Sportzlive contended that in view of the agreement and its negative stipulation against granting rights to third parties, its request for injunction should be granted.

7. Third-party unaffected by internal disputes: Sportzlive contended that it was not privy to the internal dispute between the VFI and Mr. Kumar cannot affect Sportzlive's rights under the said agreement.

8. **Irreparable Harm to Sportzlive**: Sportzlive argued that the VFI is the only organisation governing volleyball in India and a measure sufficient to remedy the harm caused to Sportzlive should be granted.

9. On these grounds, Sportzlive argued that the injunctions sought should be granted to protect its contractual rights.

(b) VFI

10. VFI argued that the agreement between the VFI and Sportzlive was invalid because Mr. Kumar had no authority to sign the agreement. The authority of Mr. Kumar is challenged on the following grounds:

(a) Misrepresentation: It was contended by the VFI that Mr. Kumar was not authorized to execute the said agreement with Sportzlive. Mr. Kumar had made representations to the effect that there was no agreement concerning

rights to conduct the volleyball league. Based on this representation, the VFI granted these rights to a third party.

(b) Requirement to encash demand drafts: It was argued that the agreement provided that it would come into force upon the encashment of the demand drafts. Sportzlive had given its demand drafts to Mr. Kumar. When VFI was informed about this, a dispute between Mr. Kumar and other VFI members arose and Mr. Kumar was expressly asked not to enter into any such agreement or deposit the money in the VFI's bank account. Nevertheless, Mr. Kumar deposited the money in VFI's account and froze the bank accounts. This escalated the dispute between Mr. Kumar and other VFI members. This shows the intention of the VFI not to be bound by the agreement.

11. On these grounds, the VFI argued that the injunction sought by Sportzlive should not be granted.

C. Judgment

12. Authority of Mr. Kumar: The High Court noted that the agreement provided for the entry into force only with the deposit of the demand drafts. In this case, the demand drafts were deposited but in contravention to the instructions of the VFI. Merely on the basis of an unauthorized deposit, an interim relief to force the VFI to part with its right to conduct volleyball leagues cannot be granted. Further, the Court took into account a press statement dated 3 October 2016 which declared that Mr. Kumar was not authorized to represent the VFI and conclude any agreements with respect to volleyball leagues.

13. Some of the considerations of the decisions of the sole arbitrator and the High Court in a related dispute between Mr. Kumar and VFI which were relied upon in this case are mentioned herein. The question was whether Mr. Kumar had such authority and power to enter into agreements that it could surpass that of the Executive Committee. It was noted that the President of the VFI had some emergency and residual powers but they were not absolute. The arbitral award also held that if the President lacked the authority to sign an agreement, even the presence of third-party interests would not validate an illegal agreement. Further, the High Court's judgment buttressed these observations. It was held that the President of the VFI does not have greater authority than the Executive Committee and the emergency powers are limited to situations where the interest of the VFI is imperiled. In the instant situation, there was nothing to show that there was any such threat. Thus, Mr. Kumar's powers were limited. Thus, in this respect, it was held that there was no prima facie case of validity. The court goes on the address the

14. Third-party unaffected by internal disputes: This contention was rejected by the High Court on the ground that the internal dispute between the VFI and Mr. Kumar is of immense bearing to the dispute. Thus, the fact that Sportzlive was not privy to the matter was not a ground to exclude the role of the dispute.

15. Failure of Sportzlive to assert rights: Sportzlive claimed in the letter dated 26 October 2016 with respect to keeping the money already paid by it a no lien escrow account resulted in an adverse conclusion. The Court held that Sportzlive failed to assert its rights under the agreement and perhaps made this demand out of the fear of losing its rights. In addition, the VFI acknowledged that an unauthorized payment had been made on 9 October 2016 and returned the amount to Sportzlive. This indicated that even Sportzlive was unsure about its rights under the agreement.

16. Thus, the Court found that no interim injunction could be granted to Sportzlive and the petition was dismissed.

D. Analysis and Conclusion

17. It is useful to note that the decision of the Delhi High Court placed heavy reliance on the decision rendered by an arbitral tribunal that was resolving the dispute that arose between Mr. Kumar and other VFI members in relation to the unauthorized payments.[90] The challenge against this award before the Madras High Court was also referred to.[91]

18. This dispute is, therefore, a reflection of the circumstances in which sporting events that are less popular function. The dispute also indicates that the discretion of an NSF to decide who it wants to contract with cannot be vested in the hands one individual as can be seen from how the supremacy of the Executive Committee of the VFI was upheld. Consequently, Baseline Ventures (India) Private Limited, which was selected by the VFI, continues to organize and manage volleyball leagues in India. Could add a line as to how this reflects on corruption and mismanagement in NSFs that contributes to disputes in Indian sports sector.

(III) Sporty Solutionz Private Limited v Badminton Association of India and Others

A. Background

1. Sporty Solutionz Private Limited ("**Sporty Solutionz**") is a full service sports marketing company which engages in distribution of sports rights, broadcasting, event operations, sponsorship, etc. The Badminton Association of India ("**BAI**") is the governing body for badminton in India.

Under this contract, Sporty Solutionz possessed the right to format, develop and organize the Indian Badminton League ("**IBL**") and the all the commercial rights in exchange of a predetermined fee. It was also agreed that the intellectual property of the IBL rested with the Sporty Solutionz. The right to terminate the contract was vested with the BAI subject to a 90-day written notice and if Sporty Solutionz breached the contract, it was subject to an opportunity to remedy it within 90 days.

3. The first IBL of 2013 was successful but on 22 April 2014, the BAI cancelled the 2014 season and provided tentative dates for 2015 without consulting with Sporty Solutionz. Solely because the IBL made losses in the first season, the BAI demanded that a bank guarantee to the tune of Rs. 50 crores be furnished by Sporty Solutionz.

(a) The BAI claimed that the Governing Council called for an emergency meeting to amend the contract to this effect.

(b) The Sporty Solutionz rejected the contention that any voting happened or resolution was tabled in respect of a bank guarantee. Any records of the said meeting are, therefore, argued to be fabricated and forged.

4. On 31 January 2015, Sporty Solutionz requested the BAI to declare the dates for the upcoming season failing which it would take legal action. In response, the latter demanded the bank guarantee failing which the contract would be terminated. Sporty Solutionz agreed to furnish a guarantee of Rs. 15 crores in installments. The BAI responded with a notice of termination dated 21 April 2015.

5. Sporty Solutionz challenged the termination before the Delhi High Court. the request for interim relief under section 9 of the Arbitration and Conciliation Act 1996 (the "**Act**") to restrain the BAI from contracting with a third party and asking them to release the provisional dates of the next season was rejected. On 30 September 2015, the BAI announced that IBL would be conducted from 2 to 17 January 2016 and an auction for the franchises was scheduled. Another application to restrain BAI from conducting the same was also rejected.

6. The arbitration agreement was invoked by Sporty Solutionz against BAI to resolve the dispute surrounding the termination of the agreement.

7. On 3 December 2015, the Respondent declared that IBL had been rechristened as the Premier Badminton League and later that long-term rights of the league were being sold to a third party, Sportzlive Entertainment.[92] An application for injunction under section 17 of the Act before the arbitral tribunal against conducting the league was rejected on the ground that a lot of money had already been invested in organizing the tournament. The order was dated 28 December 2015.

8. The award for the arbitration proceedings that were underway was rendered on 8 May 2017. The arbitrator had concluded that the Sporty Solutionz breached the contract by failing to furnish bank guarantee. However, in exercising the right to terminate, the BAI did not follow the procedure of the contract by failing to serve a 90-day notice before termination. Thus, the Petitioner was entitled to compensation only to the extent of this failure.

9. The present petition was filed before the Delhi High Court by Sporty Solutionz against the BAI under section 34 of the Act. It was sought that the award dated 8 May 2017, which was partly rendered in favour of the BAI, be set aside.

B. Parties' Submissions

(a) Sporty Solutionz

10. The submissions of the Petitioner are as follows:

(a) Forged resolution on bank guarantee: A resolution had been passed by the Governing Council demanding the bank guarantee of Rs. 50 crore from Sporty Solutionz. It is argued that the record of the resolution allegedly passed by the Governing Council is forged and Sporty Solutionz had no knowledge of this resolution. Further, such a decision in the absence of Sporty Solutionz is a serious breach of the contract. The agreement was consequently, never amended and the bank guarantee cannot be imposed upon the Sporty Solutionz. It is contended that the award was not correct in holding that there was no right to object to the document at a later stage and in allowing the bank guarantee to be enforced.

(b) Wrong invocation of emergency powers: The emergency power that was invoked under the agreement to pass this resolution is wrong because it could not have been invoked at any time. There was no situation of an emergency.

(c) No notice of termination 90 days before its execution was served to the Petitioner.

11. Thus, the Petitioner prayed that the arbitrator's award be set aside.

(b) BAI and others

12. The Respondents submitted that:

(a) Valid documents: A copy of the minutes of the meeting of the Governing Council in which the decision relating to the bank guarantee was taken has been furnished.

(b) Waiver of right to object: Any objection to the said evidence cannot be raised after it has been admitted as it concerns the mode of proof rather

than its validity. The opportunity to object to the admission of the said evidence is waived. Further, Sporty Solutionz is estopped from now objecting to the evidence.

(c) The amendment to the contract requiring bank guarantee is, therefore, valid and can be enforced.

13. On these grounds, it was prayed that the petition be dismissed and the award be upheld.

(C) Judgment

14. The Court observed that an award can be challenged only if it is patently illegal. The Court under section 34 of the Act can neither review the merits or the evidence. The Court has to examine the interpretation of the contract already made by the arbitrator in rendering its decision.[93]

15. Two clauses are in question before the Court- Clause 8.11 which was added by amendment requiring Sporty Solutionz to furnish bank guarantee and Clause 11 which provided for the 90-day notice period prior to termination of the agreement.

16. The Court observed that detailed evidence must be led in showing that a document produced by the other party is forged and liable to be rejected. Since this matter has been decided by the arbitrator, the Court did not find it appropriate to interfere.

17. It was also held that Sporty Solutionz had accepted the compensation provided by the tribunal without reservation in respect of the BAI's failure to comply with the 90-day notice period. Thus, it was estopped from challenging the award now.

18. Thus, the petition was rejected and the arbitral award was confirmed.

Analysis and Conclusion

19. The present case indicates a common type of dispute that occurs between a private organizer and a national sports federation like the BAI in relation to the rights of conducting and managing a sports event, making payments, furnishing bank guarantees and making the event a commercial success.

20. An aspect common to agreements for organizing sports leagues is the question of intellectual property. Often, these agreements, including in the present case, provide that the intellectual property rights in respect of the name, mark, logo, slogan and the brand is vested with the organizer. In the instant case, when the IBL was rechristened and a new partnership with Sportzlive was started, one of the primary interests of Sporty Solutionz that was affected was its right in the brand

present dispute because of the limited scope of the court's jurisdiction to review awards under section 34 of the Act. However, an important claim in the arbitration was the breach of intellectual property rights. Thus, intellectual property is the most crucial asset for private organizers of sporting events whose operations are built on branding and goodwill.

21. This, however, does not mean that monetary resources are of less importance. The disputes arising in the relatively less popular sports like badminton seem to have a nexus with their susceptibility to monetary losses. The BAI has shown a strong hesitation to wait for the gestation period of the league to end. It was not unexpected that the IBL needed time and resources to become a commercial success that it is today. The initial losses threatened the BAI resulting in the large claim for bank guarantee. Such instances indicate that NSFs are unnecessarily litigious and lack the understanding that these businesses require time to become profitable.

(IV) M/s Rendezvous Sports World v BCCI and Ors

A. Background

1. M/s Rendezvous Sports World ("**RSW**") is a consortium of companies engaged in the business of network services. The Board of Control for Cricket in India ("**BCCI**") is the national governing body for cricket in India.

2. A franchise agreement dated 11 April 2010 was concluded ("**first agreement**") between BCCI and RSW for the rights to operate the Kochi Tuskers team in the Indian Premier League ("**IPL**"). Clauses 8.1 and 8.4 provided that the consideration for the right to operate the franchise is the payment of a sum of USD 333 million, a league deposit and a performance deposit. The agreement also provided that a bank guarantee must be furnished by the franchisee, failure of which is an irremediable breach of the contract creating a right of termination. Bank of India, the third Respondent, issued the guarantee on behalf of the RSW.

3. At the request of RSW, a fresh franchise agreement was entered into dated 12 March 2011 between the BCCI and Kochi Cricket Private Limited ("**KCPL**"), the second Respondent ("**second agreement**"). Under the second agreement, a fresh bank guarantee had not been furnished for the 2012 IPL season. In response, an unconditional bank guarantee was demanded by the BCCI and it asserted its right to terminate the contract. Asserting that RSW defaulted under the second agreement, the BCCI invoked the bank guarantee furnished under the first agreement.

4. When arbitration was underway, a petition was filed by RSW under section 9 of

encashing a bank guarantee issued by the Bank of India in relation to the first agreement.

B. Parties' Submissions

(a) M/s Rendezvous Sports World

5. RSW contended that:

(a) The bank guarantee was intended to secure only the primary consideration of the contract under Clause 8.3(a) (USD 33 million). Since the said amount was already paid, the guarantee could not be used as against any other pending amounts.

(b) The liability under the first agreement in respect of bank guarantee ceased to exist because:

(i) the first agreement ceased to exist when the second agreement was entered into in March 2011, thus preventing the usage of the old bank guarantee against liability arising out of another agreement;

(ii) under the second agreement, guarantees were to be issued every year before the beginning of the successive IPL season. This meant that a fresh yearly payment was envisaged under the contract.

(c) Clause 8.4 of the first agreement does not stipulate that any payment of bank guarantee for succeeding years needs to be made by the RSW. Since the texts of Clauses 8.1 in the two agreements are similar, and because the amounts due in 2011 had been cleared, the obligation to furnish bank guarantees for the year 2012 and onwards rested with KPCL and not RSW.

6. On these grounds, it was prayed that the BCCI be restrained from invoking the bank guarantee furnished under the first agreement.

(b) BCCI, KCPL and Bank of India

7. The Respondents contend that:

(a) Clause 21.15 of the second agreement provides that the first agreement ceases to exist only when BCCI confirms that the payments agreed upon, including bank guarantee, have been made. Thus, the liability of RSW ceases to exist only on the furnishing of the said bank guarantee.

(b) Clause 4.4(1) of the tender notice requires the successful bidder to furnish a bank guarantee for each subsequent season as well. Since the tender notice is a part of the contract, it must allow the invocation of the bank guarantee

8. On these grounds, it was prayed that the injunction be rejected and the bank guarantee be open for invocation.

C. Judgment

9. Purpose of the bank guarantee as per the contract: The Petitioner's interpretation conflates the quantum of the bank guarantee with the purpose of its issuance. For the reason that the amount indicated in the bank guarantee is the same as the amount in Clause 8.1(a) of the first agreement, the petitioner cannot conclude that the guarantee was only intended for that purpose. The guarantee also provides that the amount is paid in fulfillment of the petitioner's obligations under the agreement. Thus, the amount of the guarantee could also be used to cover other obligations. In this regard, the Court also noted that Clause 3 establishes the purpose for which the parties intended to make the guarantee. The Clause provided that the bank guarantee could be invoked for any default committed by the AOP under the agreement, thereby giving it a wide scope.

10. Second agreement as a successor: The Court rejected the second contention on the ground that the second agreement was intended to replace the first. Recital B of the second agreement refers to the first agreement and confirms that RSW wished to replace the former and operate through the franchisee, Respondent 2. In fact, Respondent 2 was controlled by the Petitioner. Thus, the liability under the first agreement could not have lapsed merely because another agreement had been concluded.

11. The Petitioner was interpreting Clause 8.4 in isolation when they must be read with Clause 13.1 of the second agreement. The clause provides that it superseded any prior agreements in relation to the franchise leading the Court to conclude that the original franchise was a *de facto* part of the new franchise.

12. First agreement still in force: The Court accepted the Respondents' interpretation of Clause 21.15 of the contract and held that the first agreement was still in force between the parties.

13. Terms of the tender notice not a part of the contract: The interpretation of Clause 4.4 of the tender notice requiring a fresh bank guarantee every season was rejected on the ground that the notice could not override the terms of the contract.

14. The Court decided in favour of the Respondent and rejected the claim for interim reliefs.

D. Analysis and Conclusion

15. Another dispute arose out of this factual matrix the decision of which was given

after the RSW dispute was decided.[95] BCCI terminated the second agreement with KCPL on 19 September 2011 due to its failure to pay the bank guarantee. On the contrary, KCPL claimed that the number of IPL matches for the coming season had been reduced from 94 to 74 but the same franchise fee was being charged by the BCCI. An arbitration followed between KCPL and BCCI.[96] The awards were rendered against the BCCI and KCPL was awarded compensation of Rs. 384 crore for unlawful termination of the franchise agreement. BCCI filed an application challenging this award. Alongside this, execution applications were filed to enforce these awards which were combined with the challenges under section 34 of the Act and decided by the Supreme Court.[97] This dispute gives a broad picture of franchiser-franchisee relationships in the IPL and how a network of agreements is created between BCCI and companies purchasing a franchise.

(V) Rhiti Sports Management Private Limited v Power Play Sports and Events Limited

A. Background

1. Rhiti Sports Management Private Limited ("**RSM**") is a sports marketing and management company which works in media distribution, branding and sponsorships. Power Play Sports and Events Limited ("**PPSE**") is a company involved in legal and accounting activities and management consultancy.

2. India Cements Limited ("**ICL**") possessed the franchise rights of the Chennai Super Kings franchise. RSM contracted with ICL for exclusive sponsorship rights for the said franchise and agreed to handle its marketing. RSM wanted to procure some sponsorships for the team and PPSE claimed that they had the expertise and resources to procure the same for the team. Consequently, the parties concluded an agreement dated 25 February 2011 whereby PPSE would procure sponsors for the Chennai team and facilitate the conclusion of sponsorship agreements between ICL and the sponsors. As consideration for the same, the RSM agreed to pay to PPSE 5 per cent of the total fee paid by each sponsor. One of the sponsors arranged by PPSE was Gulf Oil Limited ("**GOL**"). Thus, two agreements were concluded- the first between RSM and ICL for sponsorship rights and the second, between RSM and PPSE for finding sponsors so as to allow RSM to exercise the said rights.

3. RSM paid the agreed consideration for three initial years to PPSE. Thereafter, when the sponsorship agreement between ICL and GOL was renewed, RSM failed to pay the agreed fee on renewal. As a result, PPSE invoked the arbitration clause in the agreement with RSM. During this arbitration, RSM filed an application on 19 September 2017 for placing on record some additional documents such as emails and service agreements as evidence under Order VIII Rule 1A(3) read with section 151 of the Code of Civil Procedure. The tribunal had rejected the application

and this order forms the subject of the present application under section 34 of the Arbitration and Conciliation Act 1996 (the "**Act**").

B. Parties' Submissions

4. After the tribunal's rejection to admit new evidence, RSM wanted to challenge the order. Thus, the question before the Delhi High Court was whether such an order could be understood as an arbitral award for the purposes of section 34 of the Act.

(a) RSM

5. RSM contended that any order affecting rights of parties can be construed as an arbitral award under section 2(1)(c) of the Act. RSM relied on National Highway Authority of India v Barhampore-Farakka Highway Limtied to support this wide scope of the meaning of an award for the purpose of section 34 of the Act. Since the order widely affects its rights and interests and it involves the placing of important evidence on record, it was contended that the application to admit evidence should be allowed.

(b) PPSE

6. PPSE contended that awards were to be distinguished from procedural orders and directions dealing with matters of evidence. For this, reliance was placed on Shyam Telecom Limited v Icomm Limited. Thus, the impugned order concerning only matters of evidence could not be challenged under section 34 of the Act.

C. Judgment

7. The court observed that no judicial intervention was warranted in arbitral proceedings unless specifically provided. The Court found that the order concerned procedural matters and did not qualify as an interim award. Thus, the application under section 34 of the Act failed.

D. Analysis and Conclusion

8. This case demonstrates the types of agreements that involve commercial rights in the area of sports. The instant case depicts the network of contracts that often arise out of sponsorship agreements, including marketing, procurement of sponsors, etc. While the judgment as such fails to provide information about the nuances of such agreements, the factual matrix supplies one with some notions about sponsorship agreements and payment conflicts that may potentially arise out of them. Such disputes are scarce in the field of sports in India.

9. Disputes relating to payment and quantum of payment, exclusivity of rights, etc. often arise out of sponsorship agreements especially if the sporting event is likely

to be or is not profit-making. As the sports arbitration scenario expands in India, more such disputes are likely to occur here as well.

(VI) Sahara Adventure Sports Limited v Board of Control for Cricket in India

A. Background

1. Sahara Adventure Sports Limited ("**Sahara**") is a company involved in sporting and recreational activities. Maharashtra Cricket Association ("**MCA**") is the governing body for cricket activities in the state of Maharashtra. It is affiliated to the Board of Control for Cricket in India ("**BCCI**"), which is the national body governing cricket.

2. This dispute arises out of an agreements dated 24 April 2010. The dispute arises out of the financial crisis faced by Sahara and MCA with the arrest of Mr. Subrata Roy, the Chairman of Sahara India.

3. A franchise agreement was signed between Sahara and the BCCI on 24 April 2010. Under the agreement, a bank guarantee was to be deposited for the franchise by Sahara as part of the franchise fee. The guarantee had not been given by Sahara following which the BCCI claimed that it could terminate the agreement because it was an irremediable breach. The dispute surrounded the quantum of payment because instead of 95 matches, only 74 had been conducted during the season but there was no corresponding reduction in the bank guarantee. Thus, a petition under section 9 of the Arbitration and Conciliation Act 1996 (the "**Act**") was filed to prevent BCCI from terminating the franchise agreement.[100]

B. Parties' Submissions

4. In the first matter between Sahara and BCCI concerning failure to pay bank guarantee:

(a) Sahara

5. Sahara claimed that the quantum of the guarantee had to be reduced. It was contended that if proper account was taken of previous matches and Sahara's performance, then no claim for breach would be made out. This is because instead of 95 matches initially agreed upon, only 74 matches were scheduled for the season. Thus, the full amount of bank guarantee was not due the BCCI and the injunction preventing termination should be granted.

(b) BCCI

BCCI was demanding the payment of the entire bank guarantee amount. BCCI claimed that the guarantee has not been given. The contractual terms show that

agreement and they had to be followed strictly. By failing to pay, Sahara has committed a material breach of the contract according to BCCI.

7. BCCI also contended that the quantum of the guarantee in relation to the reduced number of matches was the very subject-matter of the dispute before the tribunal and hence, pending such a determination, the guarantee as stipulated in the agreement should be followed. Thus, failure to furnish the full guarantee amount gave BCCI the right to terminate the contract and no injunction could be granted.

C. Judgment

8. The determination of the exact liability of Sahara was referred to the arbitrator and the Court refused to decide that. The Court, meanwhile, directed that a bank guarantee would be deposited by Sahara till the conclusion of the arbitration. Failing such deposit, BCCI had the right to terminate the franchise agreement on the ground of an irremediable breach. Only if such a deposit was made could the Court grant an injunction against the BCCI from terminating the contract. Thus, the petition was dismissed.

D. Analysis and Conclusion

9. This dispute highlights the swarm of disputes that can flow between different stakeholders in the conduct of the IPL- BCCI, a State Sports Federation and a private company. Several disputes arose out of these circumstances. The first dispute is related to the same franchise. The matter arose between Sahara and MCA in relation to naming rights and the license to use the MCA Stadium, Pune to host matches of the Pune Franchise. For this, an agreement dated 19 September 2011 was concluded between Sahara and MCA. When Sahara failed to pay consideration for the stadium, MCA covered the name of Sahara's 'Subrata Roy Sahara Stadium' with a black cloth. A section 9 petition was filed for injunction against the MCA from doing so while the arbitration was still pending.[101]

10. This matter was to be amicably resolved by the parties within three months and not decided by the Court. During the entire period of the settlement, the black cloth was directed to be removed. Eventually, the name of Subrata Roy was dropped and the stadium continues to be called the MCA Stadium.

11. The second dispute arose in connection with the aforesaid MCA Stadium. The said stadium was constructed via an agreement between MCA and Shapoorji Pallonji and Company Limited ("**SPCL**"). Disputes arose between the parties when MCA failed to pay SPCL due to the activities of Sahara, the arrest of Mr. Subrata Roy and the consequent financial crisis of Sahara as well as MCA. All the three

matters discussed herein, therefore, arise out of the same chain of events. It was ruled partly in favour of SPCL and MCA was required to deposit the amount or furnish bank guarantee of Rs. 150 crore pending the arbitral award.[102]

12. The chain of disputes between MCA (and BCCI), Sahara and SPCL is one of a kind but a reflection of the most common type of disputes in sports arbitration. It indicates a special feature of such arbitration cases which brings out the importance of negotiations and interim relief granted by courts till the resolution of the matter. The aim of the courts has been to keep the sports event unaffected due to the dispute because of the high financial stakes involved the event. This indicates the role of courts in granting effective interim relief and resolving a matter keeping interests of both parties in mind.

(VII) Deccan Chronicle Dispute

A. Background

1. Many disputes arose in connection with the Deccan Chargers franchise in 2012-13. Three disputes arise directly out of the franchise agreement between Deccan Chronicles Holdings Limited ("**DCHL**") and the Board of Control for Cricket in India ("**BCCI**"). Chronologically, the first petition was filed under section 9 of the Arbitration and Conciliation Act 1996 by DCHL before the Bombay High Court ("**Dispute 1**").[103]

2. The second appeal was filed by BCCI under section 37 of the Act challenging the order passed by the arbitral tribunal under section 17 of the Act ("**Dispute 2**").[104] While DCHL challenged the decision before the Supreme Court via an SLP, it was dismissed.[105]

3. The final petition was filed by DCHL under section 9 of the Act before the Bombay High Court, the decision of which was also rendered on the same day as the preceding appeal ("**Dispute 3**").[106]

4. A franchise agreement was concluded between DCHL and BCCI on 10 April 2008 for the Hyderabad franchise. Clause 11 of the agreement provided that the contract could be terminated only by providing a notice in writing if the other party fails to remedy the breaches it has committed within 30 days. Failure to make payments was to be regarded as a material breach of the contract. DCHL failed to make payments to its players, staff associations and overseas cricket boards. As a result, winding up petitions were also filed against the franchise by one M/s IFCI Limited.

5. BCCI issued a letter dated 16 August 2012 to DCHL alleging that it was in breach of the franchise agreement and it had till 15 September 2012 to remedy

them failing which termination would ensue. The remedies to be made included making of payments, showing proof of withdrawal of the winding-up petitions, etc. DCHL was running into a financial crisis as financial institutions such as Pramerica Asset Managers, PIL Industries, Tata Capital Financial Services, etc. brought matters against it.[107]

6. YES Bank approached the BCCI on 5 September 2012 with an offer to make immediate payments and remedy the breaches on the condition that BCCI would remit the outstanding amounts payable to DCHL in the account maintained by the latter with YES Bank. On 14 September 2012, DCHL contended that it had not breached the franchise agreement and invoked the arbitration clause. In the meantime, YES Bank discovered that BCCI was considering terminating the contract despite YES Bank's offer. YES Bank urged the BCCI not to terminate the contract since the material breaches had been cured within the 30-day period granted by BCCI. Despite this, BCCI provisionally terminated the agreement on 14 September 2012, a day before the expiration of the 30 day period, subject to the remedying of the breaches by 5 pm the following day.

7. Dispute 1 was filed by DCHL on 15 September 2012 following the expiration of the 30-day period to seek immediate relief to restrain the BCCI from terminating the franchise agreement. The Court found that a *prima facie* case was made out by the petitioner. As a result of this decision, the relief sought was granted but DCHL was required to furnish a bank deposit of Rs. 100 crore on or before 9 October 2012 to balance the interests of both parties. On the morning of 9 October, DCHL applied for an extension till 12 October which was accepted. On 12 October, a second request was made on the ground that DCHL was under negotiations with Kamla Landmarc Read Estate Holdings, the second respondent, for an agreement to sell the franchise but the request for further extension was declined.

8. After this, an application under section 17 was filed by DCHL before the tribunal to maintain status quo and this was passed on 12 October 2012. This is the order challenged by BCCI in Dispute 2 which was set aside, thereby allowing BCCI to terminate the contract. With this, BCCI immediately issued a tender notice dated 14 October 2012 inviting bids for a new franchise agreement. In Dispute 3, which was decided on 18 October 2012, DCHL sought an injunction against the said tender notice and to prevent BCCI from terminating the agreement. DCHL claimed that it had already entered into an MOU for selling the franchise Kamla Landmarc Real Estate Holdings on 11 October 2013, a day before the contract would have been terminated and on this ground, DCHL argued that the sale should be allowed to conclude.

B. Parties' Submissions

9. Since Dispute 1 was instituted following the expiry of the 30-day period, the question herein was whether the injunction should be granted to DCHL to prevent BCCI from terminating the franchise agreement.

(a) DCHL

10. The following contentions were made:

(a) YES Bank had substantially cured all the defects and breaches by agreeing to make payments. It would, therefore, be unfair for BCCI to accept these payments while terminating the agreement.

(b) BCCI always intended to terminate the agreement given its premature notice and its hasty confirmation thereafter.

(c) In respect of the winding-up petitions, DCHL submitted that IFCL had agreed to withdraw the matter.

11. Therefore, DCHL prayed that the termination should be set aside failing which irreparable harm would be caused to it.

(b) BCCI

12. The following contentions were made:

(a) DCHL had been facing financial problems for a considerable period of time and it was necessary for BCCI's reputation to ensure that any failure to remedy the breaches was avoided.

(b) DCHL failed to deposit the amounts with BCCI by 15 September 2012 because YES Bank's payment had been conditionally made and there was no evidence that the winding-up proceedings had been withdrawn/dismissed before the said date.

(c) It was requested that the Court also give due importance to the BCCI's interests.

C. Judgment

13. The Court observed that the payments could not be made by YES Bank due to circumstances beyond its control. The demand drafts had been forwarded to BCCI as a commitment to pay on 15 September 2012. The Court viewed this as sufficient to regard the payment as having been made by YES Bank to BCCI.

14. The Court also accepted DCHL's contention that the winding-up petition had been withheld by M/s IFCI Limited. Thus, the Court held that BCCI had terminated

the contract hastily and allowed the interim relief. To ensure that interests of both parties are met, the Court directed DCHL to furnish an unconditional bank guarantee to the tune of Rs. 100 crore to BCCI on or before 9 October 2012. DCHL was directed to bear all expenses relating to conducting matches, meeting team costs, etc. The Court order was to immediately cease to be in effect if DCHL failed to furnish the bank guarantee.

D. Analysis and Conclusion

15. These disputes are indicative of a characteristic unique to sports arbitrations whereby parties trapped in multiple loans due to paucity of funds enter into negotiations in an attempt to settle the matter. The negotiations between the parties from 16 August 2012 till 15 September 2012 suggest this. In fact, DCHL was even forced to negotiate with the President of BCCI on 29 August 2012 for permission to sell the Hyderabad Franchise, 'Deccan Chargers'. To DCHL's relief, YES Bank's offer to clear the dues was made on 5 September 2012.

16. After the October 1 decision was rendered, another petition was filed on 9 October 2012 for an extension for furnishing the bank guarantee till 12 October 2012 and this was granted. A second request was made on 12 October 2012 but the Court rejected it even though negotiations with Kamla Landmarc were already underway. This also goes to show the role of negotiations in resolving matters arising out of franchise agreements. However, due to the failure to furnish the guarantee, the interim relief restraining BCCI from terminating the agreement had ceased to have an effect in this case.

17. Another application was filed before the arbitral tribunal by DCHL under section 17 of the Arbitration and Conciliation Act 1996 for interim relief. By the order dated 12 October 2012, the relief provided in the judgment of 01 October 2012 was allowed to continue. BCCI challenged this order under section 37 of the said Act. The Court noted that the order of the High Court was self-operative and the injunction was set aside.

18. It may be noted that an SLP was filed by DCHL to challenge this decision. The petition was dismissed on the ground that the franchise agreement stood terminated. Following this, BCCI soon called for tenders for the purchase of the Hyderabad franchise on 14 October 2012. At the time, the appeal against the said order was still pending. This petition was filed under section 9 of the Act to prevent BCCI from acting upon the tender notice and terminating the contract. The Court held that due to the self-operative nature, the contract had automatically been terminated. Further, the requisite permissions were not obtained by DCHL and as a result, no interim relief was granted to DCHL. Thus, BCCI was allowed to continue

and 'Sunrisers Hyderabad' came into existence.

19. The journey of the Hyderabad franchise is suggestive not only of disputes that commonly arise between a franchisee and an NSF but also of the importance of negotiations in such matters. What is also true is that negotiations may complicate matters as was the case herein, and increase litigation surrounding the matter. Since sports are public-driven, it is not uncommon that franchisees run out of funds and are unable to make payments. The Hyderabad franchise is a good example in the public domain of the termination of franchise agreements due to non-payment and the consequences flowing therefrom.

(VIII) Anti-Doping Rule Violations and the No Fault or Negligence Argument

A. Background

1. Anti-doping matters are the most common disciplinary cases that reach the CAS. They surround breaches of the NADA Anti-Doping Rules and substances that are prohibited in the WADA Prohibited List are tested and found to be present in the body of the athlete. There are other rule violations like evading a doping test which have resulted in CAS appeals. Three of such decisions involving Indian athletes are discussed herein. Matters between WADA on the one hand and on the other, Ms. Geeta Rani[108] and Ms. Mhaskar Maghali,[109] both weightlifters and Mr. Amit, a wrestler.[110]

2. Ms. Geeta and Ms. Maghali tested positive for prohibited substance whereas Mr. Amit fled the competition as he feared testing positive on consuming a Redbull drink and was proceeded against for deliberately evading a doping test. WADA filed appeals against these athletes to challenge the decisions of the Indian Anti-Doping Appeal Panel whereby the athletes were exculpated in the latter case and a lesser decision was rendered in case of the former.

B. Parties' Submissions

(a) Broad issues generally raised by WADA

3. In these appeals, some common broad issues are raised by WADA:

(a) In discharging the initial burden of proof, that an anti-doping rule violation was committed by the athletes.

(b) That the period of ineligibility is subject to reduction only if the absence of intention to cheat is shown by the athlete. For this, it is contended that the athlete committed the violation in an intentional or negligent manner. For this, the athlete needs to show:

(i) The source of the prohibited substance, that is, an explanation for how it

entered the athlete's body without an intentional consumption.

(ii) That there is any other proof that such an intention was lacking- for example, showing that there was a third-party attack or that the drugs were prescribed by a doctor and/or were declared by the athlete to NADA.

(c) That the burden of establishing that a third-party attack was present is very high and it is not met in the circumstances of the case.

(b) Broad issues generally raised by the athletes

4. Athletes generally made the following contentions:

(a) That there was no breach of any anti-doping rule violation because there was some error in the testing or for other reasons.

(b) That if there was a violation, the manner of the entrance of the substance into the athlete's body is such that no fault or intention can be deduced on his/her part.

(c) That there was a third-party attack- for instance that the athlete's food/drink was spiked or wrong advice was given by other persons relying on which the athlete acted.

C. Judgments

6. Burden and Standard of Proof: At the onset, the awards have noted that under Article 2 of the NADA Anti-Doping Rules, the athlete is responsible for knowing what constitutes a rule violation and which substances are in the Prohibited List. The burden of proof, as laid down in Article 3.1 of the rules, lies with NADA to show that a violation has occurred. The standard of proof is whether the same has been established to the comfortable satisfaction of the panel. It must be established by more than a balance of probability but the burden is not has high as proving the violation beyond reasonable doubt. The burden to rebut a violation is on the athlete and the exception must be established by a balance of probability.

7. Period of Ineligibility and lack of intention: The period of ineligibility is as prescribed in the Rules but the period can be reduced if the athlete can show that the rule violation was not intentional. For instance, Article 10.2.3 of the rules provides that intention refers to cheating. An athlete cheats when he/she knows that his/her conduct is one involving a breach of the rule or where there was a significant risk of a breach and it is manifestly disregarded.

8. In order to show that there was no fault or negligence, the totality of

inexperienced and uneducated about anti-doping rules and thus, could not have possessed the intention to commit the violation. However, the CAS has unequivocally rejected these contentions. In *WADA v Amit*, it was submitted that the reason why the athlete evaded the doping test was because he was scared, uninformed and wrongly advised by his coach. This contention was rejected because an athlete is presumed to know what constitutes a violation. Accordingly, such factors are irrelevant because a certain degree of due diligence is expected to be exercised even where the athlete is not aware of the rules. Thus, there is substantial fault.

D. Analysis

10. While the *Geeta Rani* matter clearly held that the source or origin of the prohibited substance was not mandatorily to be shown to establish lack of intent, it may be noted that the *Mhaskar Maghali* award, which was rendered months after the former case, continued on the presumption that the showing the source was mandatory. It certainly may be argued that in both cases, the athletes lacked a strong factual case, but there was no reason for the Court to continue on this supposition. It is possible that the Court referred to this requirement because the Ms. Maghali had made no attempt to establish how the substance entered her body, whereas this was the very subject matter of the contentions and the decision in *Geeta Rani*.

11. The usage of a higher standard of proof and rejection of hearsay evidence and mere affidavits is in line with accepted rules of law on evidence. Hearsay evidence is generally heavily relied on where the athlete is attempting to establish a third-party attack. In *WADA v Narsingh* Yadav, third-party attacks were considered in detail. The athlete contended that a rival wrestler had put the prohibited substance in powdered form into the athlete's amino drink and he had previously attempted to do so in other ways. The Court concluded that the evidence was insufficient and hearsay evidence could not be relied upon.

12. In respect of uneducated and inexperienced athletes, it can be difficult to relax the law because that would open the possibility of serious misuse. In order to reach a balance, it is important that genuinely ignorant athletes are educated about the risks, doping-free alternatives for supplements, etc. so that they are not subject to the adverse consequences that flow from anti-doping rule violations. Athletes too must exercise some due diligence before consuming products, supplements and other medication when they are unlikely to know the scientific differences between various drugs and their impact on the athlete's body.

E. Conclusion

circumstances must be considered.

(a) Positive doping cases: The athlete must establish how the prohibited substance entered his/her system if it is a case of doping. However, it may be noted that in *WADA v Geeta Rani*, the award contained an important question. It was decided whether the proof of origin of the substance was mandatory in showing the absence of intention. The Court accepted that there is a difficulty in establishing absence of intent and the degree differs with each case. It was also observed that an explanation of how the substance entered the body does not necessarily establish the lack of intention.

There is a multitude of decisions which considers that proof of source is necessary to show absence of intention, one of which is *WADA v Mhaskar Maghali*.[111] The intonation of the Court in the case seemed to be that the athlete was required to establish the source of the substance but did not discharge the burden. However, the decision in Geeta Rani held that proof of source is crucial but not mandatory in showing the absence of intention. Some ways of showing the source include prescription by doctors of medications which contain the substance, some other product or medication consumed by the athlete, etc. This is subject to the declaration of the prohibited drugs in the Doping Control Form. However, these are rarely accepted as circumstances justifying reduction in ineligibility period.

(b) Other rule violations: *WADA v Amit*, for instance, was based on the contentions that he appeared voluntarily for the test the next day (1); no adverse finding was made in the doping tests (2); and that he received wrong advice from his coach about the constituents of the Redbull drink (3). All the contentions were rejected as the burden to show the lack of intention was higher. In this case, there arose no question of showing the source of the substance.

8. Third-party attacks: Many athletes contend that the reason for the presence of the prohibited substance is that a third-party administered the substance to them without their knowledge. For instance, in Geeta Rani, the Court equalled the act of spiking drinks with other offences like match-fixing and corruption. Thus, a very high standard of proof is applied by panels in such cases. Unverified speculations and allegations are never accepted. Hearsay statements or simple affidavits of athletes contending such attacks are not accepted as evidence.[112]

9. Inexperienced and uneducated athlete: The NADA has accepted as an argument that the athlete committing the violation was from a rural area,

CAS. Some common issues invariably arise in these cases including proving a violation, lack of intent, third-party attacks, etc. However, due to the high burden of proof and poorly established facts, appeals relating to spiking, etc. often fail.

(IX) Amar Muralidharan v Indian National Anti-Doping Agency, Indian National Dope Testing Laboratory and Ministry of Youth Affairs and Sports

A. Background

1. Proceedings against Mr. Amar Muralidharan ("**the athlete**") happened before the Anti-Doping Disciplinary Panel on 21 September 2012. On obtaining an adverse ruling, the athlete filed an appeal before the Anti-Doping Appeal Panel on 16 November 2012, which was heard on 27 February 2014. The present CAS appeal was filed against the decision of the Appeal Panel on 17 June 2014. The facts of the case are as follows:

(a) During his participation in the National Aquatic Championships 2010, the athlete was randomly selected for an anti-doping control test which tested positive for the presence of methylhexaneamine ("**MHA**"), which is a prohibited substance on the WADA 2009 Prohibited List.

(b) The athlete was provisionally suspended. He requested for a Sample B test witnessed by an independent observer which confirmed the result of the first test. The athlete contended that Dr. VK Sharma, who was appointed as observer, was a member of the ADAP Panel and therefore, not independent. However, NADA contended that the VK Sharma on the panel was different from the observer though they had similar names.

(c) The sample of the athlete that was tested reflected an error as to the sample number. The athlete's number was 10211 but MHA was found in sample number 10202, which NADA contends was merely a typographical error.

(d) The opportunity to be heard was given to the athlete after a delay of two years from the date of declaration of the sample test results, as a result of which the athlete had remained suspended for that time period without a hearing.

(e) The Anti-Doping Disciplinary as well as Appeal Panels concluded that an Anti-Doping Rule Violation of (Article 2.1, NADA Anti-Doping Rules) had been committed. A two-year suspension was imposed.

(b) Parties' Submissions

(a) Amar Muralidharan

grounds:

(a) In response to the Respondents' contention on jurisdiction, the athlete contended that:

(i) The CAS arbitrator could decide upon his own jurisdiction.

(ii) CAS has jurisdiction if the competition giving rise to the appeal is an international event. The National Championship was a qualifier for the Commonwealth Games and was, therefore, of an international character.

(iii) In any event, the Respondent waived the right to contend jurisdiction because such an objection was not raised in their reply.

(b) The clerical error in the sample is not denied by the Respondents and casts a doubt on whether the sample in fact belonged to the athlete. It, therefore, cannot be relied on by the arbitrator to establish an anti-doping rule violation. It is argued that:

(i) The violation is so fundamental that the departure affects the integrity of the sample and invalidates the sample.

(ii) Even if the violation is not fundamental, the departure is of such a nature that it cannot satisfy the burden to show that the error was not the reason the violation happened. Thus, any claim of a rule violation must be dismissed.

(c) The athlete can get a second sample tested as a matter of right. Since the first sample ought to be discarded, the athlete's right is violated because he did not get an opportunity to get the second sample confirmed by another test. The athlete cannot be condemned only on the basis of the second sample when he has not waived the right to get a Sample B test.

(d) Sample B cannot be used against the athlete because he was unable to attend the opening of his sample, of which he had the right. While he exercised the right to have an independent observer to be present instead of him, Mr. VK Sharma, who was on the Appellate Panel was appointed for this purpose. The athlete questions his independence as an observer.

(e) The athlete was denied access to justice because his hearing was conducted after a span of two years from the date of his provisional suspension. Consequently, he did not receive a timely opportunity to have his suspension reviewed before the expiration of what would have been the period of ineligibility.

(b) NADA, Indian National Dope Testing Laboratory, Ministry of Youth Affairs and

Sports

3. The Respondents prayed for the dismissal of the appeal on the following grounds:

(a) The CAS lacks jurisdiction to hear the matter under Article 13.2 of the NADA Anti-Doping Rules which provides that decisions may be appealed only if they involve an international event or international-level competitor. The Respondents contend that the athlete is not an international player. Further, there is no statute or arbitration clause granting CAS jurisdiction over the dispute.

(b) NADA strictly followed the rules laid down in the International Standards for Testing in respect of collection, maintenance and testing of the urine sample. The integrity of the sample was maintained throughout and no adverse discrepancy can be observed which could have artificially resulted in the presence of MHA in the sample. Any delay contended by the athlete in completing the test has no impact on the result.

(c) Mr. VK Sharma is independent and it is denied that he is a member of the Appeal Panel. The athlete has mistaken the observer for the Panel member, both of whom are named VK Sharma.

(d) Both samples between which the athlete contends a mix-up happened tested positive for MHA. Further, the test of the athlete was confirmed by sample B. The error in the numbering of the sample is merely clerical and no doubt can be cast on the veracity of the test results.

(e) The athlete had sufficient opportunity of being heard and all documents were provided to him.

C. Judgment

4. Three broad issues lay before the CAS.

(a) Whether the CAS had jurisdiction over the dispute.

(b) Whether an anti-doping rule violation was committed by the athlete.

5. On the question of jurisdiction, the award addressed two issues:

(a) Whether the Respondents waived the right to object to the arbitrator's jurisdiction by failing to raise a timely objection.

(b) If there was no waiver, whether the Championship was a competition or the athlete is an international-level player under Article 13.2.

6. The arbitrator held that the objection to jurisdiction was, in fact, not timely

raised by the Respondents because a plea of jurisdiction must be raised before any defence on merits is made according to Article 186 of the Swiss Federal Statute on Private International Law. Further, the athlete had competed in various international-level competitions. Thus, CAS has jurisdiction over the matter.

7. The arbitrator clarified that the burden to establish a violation rested with the NADA for which the standard of proof is whether the violation has been established to the comfortable satisfaction of the arbitrator.

8. WADA laboratories are presumed to have followed the international standards unless a departure is clearly established. The arbitrator held that the error in the laboratory packaging does not cast a doubt on whether the sample was in fact the athlete's. It was merely a clerical error and does not have an impact on the reliability of the test result. The errors are unfortunate but not fundamental.

9. The independence of the observer is not questionable because the athlete was under a factual mistake. The observer and panel member had similar names but they have been identified to be different persons and thus, his independence is confirmed.

10. The athlete's contention that his only valid positive test was Sample B and a corresponding sample to confirm the same was not done, was rejected. This is because the athlete was notified of his right to request for a second test and his first sample was held to be valid. Thus, the right to get two tests done was satisfactorily met.

11. According to Article 8.3.8.2 of the NADA Rules, the proceedings must be completed within three months. The arbitrator accepted the contention that there was undue delay in the hearings because they were conducted after a span of two years since the provisional suspension, effectively making it a lifetime ban. However, the delay did not take away the athlete's chance to demonstrate his innocence effectively. The athlete did not explain how the prohibited substance entered his body, in which case the delay would have impacted his ability to demonstrate his innocence. However, the arguments made herein indicate no impact on his opportunity to do the same.

12. The contention regarding the breach of international testing standards while transporting and testing the sample was rejected. All the protective measures to preserve the integrity of the sample were undertaken. While the actual test was conducted three days after its collection, it was not an unreasonable delay. In any event, the delay was not of such a nature as to cause the emergence of MHA in the sample. No such causative link can be established. Thus, these minor deviations

Since the athlete could not establish to the comfortable satisfaction of the arbitrator that the adverse finding was caused by a departure from the established rules, the athlete is liable for the anti-doping rule violation.

D. Analysis

14. It is common for athletes defending an anti-doping rule violation to contend that there has been a procedural irregularity in their testing or otherwise. However, this dispute is an instance which goes to show that such contentions are rarely accepted. Such arguments seem to have a strong link with transparency concerns that have been raised persistently with respect to testing and other procedures undertaken by Anti-Doping Agencies. Even in the present case, the arbitrator condemned the inaccuracies in the tests that were conducted. The confusion and lack of faith in the testing process was induced because of failure to show due care in numbering the samples, conducting prompt tests, clarifying the details of the observer, providing sufficient notice before Sample B tests, etc. While these derogations do not scientifically or materially, if at all, alter the results of the tests, they do cast a doubt on the systemic functioning as a whole.

15. In *IAAF V RUSAF*, the evidence-disclosure packet had several errors that were recognized by the arbitrator. These errors were held not to affect the strength of the evidence but nevertheless, casted a doubt on their effectiveness.[113]

16. A recent issue that can illustrates this point is the matter between the World Anti-Doping Agency ("**WADA**") and the Russian Anti-Doping Agency, RUSADA. The WADA Executive Committee in December 2019 decided to recommend that the RUSADA be declared non-compliant with the WADA Anti-Doping Code for a four-year period. This is because of several inconsistencies in anti-doping data that were discovered during an investigation conducted by the Compliance Review Committee of WADA. The effect of this decision would be the banning of Russia from international sports, including the Tokyo Olympics which are to be conducted in July 2021. RUSADA has filed an appeal against this recommendation before the CAS which is pending.[114]

E. Conclusion

17. This case indicates the problems that may arise with poor implementation of testing standards. While CAS has been reluctant to accept that the inconsistencies in testing standards, if any, are material, it has resulted in a multitude of cases before the Court. The RUSADA scandal is only an indicator of the aforesaid issues.

(X) Dutee Chand v Athletics Federation of India (AFI), IAAF

A. Background

1. The Dutee Chand case is a challenge to the validity of the IAAF Regulations Governing the Eligibility of Females with Hyperandrogenism to Compete in Women's Competitions (the "**Regulations**").

2. In June 2014, Ms. Dutee Chand, an Indian athlete (the "**athlete**"), was subject to a routine doping test and an ultrasound examination. While the athlete did not understand the connection with doping, she did not protest and underwent the test. The AFI mentioned that participants at the National Inter-State Athletics Championship had expressed concerns about the athlete's appearance. AFI denied that the testing had anything to do with determining the athlete's sex. Eventually, it was clarified that a gender verification test should be performed on the athlete and this was done in Bengaluru. The athlete was prevented from participating in the World Junior Championships and was not eligible for the Commonwealth Games because the levels of male hormone in her body were too high.

3. The athlete, vide letter dated 31 August 2014, was suspended by the AFI from all athletics events. The athlete wrote to the Secretary-General of the AFI to request reconsideration of this decision because the high androgen levels in her body were naturally occurring and not because of doping.

4. After her suspension, the athlete appealed the case before the CAS challenging the Hyperandrogenism Regulations, claiming them to be discriminatory and invalid. The following issues were raised in the appeal:

(a) Whether the Regulations discriminate against certain female athletes based on natural physical traits and sex.

(b) Whether the Hyperandrogenism Regulations should be declared invalid due to the absence of scientific evidence to show that endogenous testosterone improves athletic performance in females and whether 10 nmol/L is the scientifically correct threshold to determine eligibility.

(c) Whether the Regulations are disproportionate in respect of discrimination on the basis of a natural physical characteristic and/or sex and whether they are harmful.

(d) Whether the Regulations are invalid because they authorize an unacceptable

B. Parties' Submissions

(a) Dutee Chand

5. The athlete seeks that the Hyperandrogenism Regulations be declared invalid and void and that the letter rendering her ineligible be set aside. The contentions in respect of the validity of the regulations are as follows:

(a) Discrimination: To show that the Regulations are discriminatory, certain breaches of anti-discrimination provisions in the Olympic Charter, IAAF Charter and international human rights law are alleged:

(i) The Hyperandrogenism Regulations discriminate against certain female athletes on the basis of a naturally occurring substance. Any advantage in performance is nothing more than a genetic gift that can take various forms of biological variations.

(ii) The Hyperandrogenism Regulations discriminate against female athletes because there is no upper limit of testosterone for male athletes, thereby subjecting women to an additional eligibility criterion.

(b) Scientific basis of the Hyperandrogenism Regulations: The athlete contends that the Regulations are based on two premises- first, that elevated levels of testosterone give elite female athletes a performance advantage and second, that medical science is currently capable of delineating the ranges of testosterone levels in male and female athletes. The athlete contends that both these premises are not scientifically backed because:

(i) There is currently no scientific evidence to show a necessary causal relationship between testosterone levels and athletic performance. There can be high-level athletes who are hypoandrogenic or have conditions like androgen insensitivity syndrome. Thus, no necessary link between the two exists.

(ii) Endogenous (naturally occurring) and exogenous testosterone have different physiological impacts.

(iii) The ranges of normal testosterone levels in male and female athletes can overlap and the threshold of 10nmol/L is not scientific. There are no scientific norms for acceptable levels of testosterone and the nature of testosterone in inherently dynamic. Studies show that while a majority of the values were within the expected range, a wide range of outliers were found with overlaps between male and female athletes. Thus, there was a good reason to include outliers like the athlete unless there was a strong

relies on expert evidence given in several scientific studies.

(c) **Proportionality**: The athlete contends that the harm caused by the Hyperandrogenism Regulations are grossly disproportionate because they cause stigmatization, damage to self-esteem, humiliation, unnecessary medical tests and treatments with permanent side-effects. They prevent female athletes from participating due to an inherently natural trait which is not different from other physical, social or physiological factors. The Regulations reinforce stereotypes of femininity and do not effectively protect the confidentiality of the athlete.

(b) IAAF

6. The IAAF contends that the challenge by the athlete is invalid on the following grounds:

(a) Discrimination: The IAAF's contentions in response to the arguments on discrimination are:

(i) The Regulations are sex-based eligibility criteria and therefore, based prima facie on sex-based discrimination.

(ii) The intent of the Regulations is the protect fair play and create a level-playing field for all the female players.

(b) Scientific basis of the Hyperandrogenism Regulations: The IAAF contends that:

(i) Testosterone is a significant determinant of athletic performance. There are studies to explain the connection between the two, though not definitively. It is not linked with the sex of the athlete, which is a legal question. It merely means that some females have special conditions that cause them to have traits which are usually possessed by mal

(ii) The physiological effects of endogenous and exogenous testosterone are the same.

(iii) Testosterone levels are the most significant metric to explain the performance differences between male and female athletes. Expert evidence shows that female athletes with high testosterone levels have a significant advantage. Thus, testosterone levels are the best discriminating factor to determine eligibility.

(iv) It is possible to identify a reasonable female range of testosterone and the IAAF has determined the same after taking into account detailed research on the matter. That male and female ranges overlap is untrue because

there are only two identifiable causes for the same- abnormal situations like Hyperandrogenism and over-training. Absent these causes, a healthy woman has zero chances of crossing the threshold. There is a clear rational for using 10 nmol/L as the acceptable level and this also leaves enough margin for outliers. Women beyond the said level would have an unfair advantage and thus, cannot be eligible.

(c) Proportionality: Hyperandrogenism Regulations have the legitimate and ethical aim of preserving fairness in competitive athletics and providing a level-playing field. The argument that the advantage of Hyperandrogenism is no more than other traits is not veritable because there is evidence to show that high levels of testosterone significantly boosts performance in female athletes. This creates an unfair advantage over other female athletes within the normal range and thus, they are not similarly situated. Further, the Regulations do not challenge the sex of the athlete and acknowledge that there are female athletes with such conditions. Further, the Regulations are only eligibility criteria and in no way a metric to determine who is a male or a female. There are safe medical procedures such as contraceptive pills which are taken worldwide by all women to treat Hyperandrogenism. Thus, the Regulations are necessary and proportionate.

C. Judgment

7. The Court clarified that the athlete had the burden to show that the Regulations are invalid on a balance of probabilities. Once *prima facie* invalidity is shown, the IAAF had the burden to justify the discrimination as reasonable or proportionate.

8. Discrimination: The tribunal concluded that since the Regulations only apply to female athletes and discriminate against them on the basis of a natural characteristic, they are *prima facie* discriminatory. The burden is, therefore, on the IAAF to establish that the Regulations are necessary, reasonable and proportionate.

9. Scientific basis of the Hyperandrogenism Regulations: After analyzing the various expert opinions given during the course of the hearings, the tribunal reached the following conclusions:

(a) As to the relationship between testosterone and athletic performance, the tribunal considered first, whether testosterone has such an effect and second, whether there is a difference between endogenous and exogenous testosterone. The various anomalies pointed out by the athlete in respect of overlaps, absence of a correlation between testosterone and athletic

it cannot be said that there is no relationship between testosterone levels and athletic performance. The tribunal also considered the argument that there is a correlation between endogenous testosterone and performance but not a causation. However, due to the conflicting scientific evidence on the subject, on the basis of onus discharged, the tribunal held that IAAF was able to show that the Regulations were reasonably based on scientific data and the athlete has not been able to show the contrary.

(b) The panel also held that even though there are outliers, there is a significant disparity in the testosterone levels of male and female athletes. The outliers do overlap and IAAF has been able to justify why those outliers are liable to be excluded. Thus, IAAF has justified its reliance on testosterone as an indicator of eligibility for the purpose of creating male and female categories.

(c) The athlete has also failed to show that testosterone is not a material factor in athletic performance.

10. Thus, the reliance on testosterone as an indicator for the purposes of the Hyperandrogenism Regulations is justified.

11. Hyperandrogenism Regulations as necessary and proportionate: It is reasonable to divide athletes into male and female categories broadly but the criterion for such a divide must also be reasonable. The level of testosterone in an athlete's body is accepted as a key indicator. However, the bone of contention is that within females, a new category of ineligible females is being created solely based on competitive advantage.

12. As a fundamental principle of Olympism, every athlete must be given an opportunity to compete and cannot be prevented from competing on the basis of a natural and unaltered state of her body. Excluding an athlete from altogether competing in any event based on a natural advantage or making her right to compete conditional upon medical intervention which reduces her athletic performance is detrimental and not necessary or proportionate.

13. The Regulations are based on the premise that some female athletes have testosterone levels which give them such a significant athletic advantage (usually enjoyed by male athletes) that it outranks any other genetic or biological advantage that athletes may possess. Thus, what complicates Hyperandrogenism is the degree of advantage gained by female athletes and the risk of an unfair competition. This has no nexus with the legal sex of the athlete.

impact that endogenous testosterone has on a female athlete's performance. Consequently, this degree of advantage cannot be said to be high with the available research. It cannot be said that the advantage that is known to exist justifies the creation of a separate category of ineligible females based on their testosterone levels. Thus, the Regulations do not fulfill their purpose and are not necessary or proportionate to preserve the fairness of the sport.

15. Thus, the tribunal decided that the Regulations were invalid and their application was suspended for two years during which the IAAF was required to supply sufficient scientific evidence about the quantitative relationship between testosterone and athletic performance in females. Failing this, the Regulations would be declared void.

D. Analysis

16. This case is an example of a challenge to the regulations of an ISF of a sport. Such challenges especially in relation to Hyperandrogenism are common and unlikely to be conclusive because of the serious lack of scientific evidence in these areas. This award goes to show the significant role that scientific and expert evidence can play, especially in sensitive matters.

17. In another recent matter on Hyperandrogenism against Ms. Caster Semenya, a South African athlete, her appeal was dismissed by the CAS on the ground that maintaining minimum testosterone levels was necessary to preserve the fairness of sports and provide a level-playing field. However, the reason was slightly different. The tribunal held that it would be impossible for the athlete to constantly monitor her testosterone levels even though she was undergoing treatment and it would be difficult to conclusively determine whether her testosterone levels at the time of the competition are within permissible levels. Therefore, the Regulations were held to be necessary.

18. While this standpoint was absent in Dutee Chand's case, it cannot be said that this reasoning is sound because it breaches the fundamental principle of sports- that every individual has a right to the opportunity to compete in any sport. Ms. Semenya was deprived of this and prevented from competing as a 'preventive' measure.

19. Another example of a challenge to ISF regulations is the *Striani* case against UEFA's Financial Fair Play Regulations. This was not a challenge before the CAS but before the Brussels Court of Appeals. The appeal contested the prohibition on investment by clubs in transfer markets which curtailed the ability of players to increase income. This was rejected on the ground that the court lacked the

E. Conclusion

20. Cases involving a challenge to ISF regulations are relatively rare and these instances have shaped the face of athletics and other sports today. They have been able to create a route for fair regulations and accountability among ISFs and also to ensure that players and athletes are not treated in an unfair way or subjected to unreasonable regulations. This has also seen failures as can be seen from the Semenya case, which was decided after the Dutee Chand matter, but the latter creates scope for discussion and upholds the validity and acceptance of the CAS as a decision making body.

(XI) Indian Hockey Federation (IHF) v International Hockey Federation (FIH), Hockey India (HI)

A. Background

1. The matter between the IHF one the one hand and the FIH and HI on the other concerned competing claims for recognition as the governing body for hockey in India.

2. The IHF was formed in 1925 and regulated hockey in India since 1927 when it joined the FIH as a member. In around 2000, the IHF and Indian Women's Hockey Federation ("**IWHF**") merged to create a new entity the Indian Hockey Confederation ("**IHC**"). In 2008:

(a) FIH claimed that it discovered that the IHC was a façade behind which both men's and women's hockey being governed by IHF and IWHF respectively. Following this, the FIH temporarily suspended the recognition of IHF.

(b) IHC claimed that this was untrue and membership of the FIH had transferred to the IHC after the merger.

3. The FIH's decision of suspension was challenged in Indian courts. FIH and Indian Olympic Association ("**IOA**") met to form a new governing body in India for regulating hockey. Accordingly, HI was set up in this meeting.

(a) IHF claims that this decision is not enforceable because IHF was not informed about this meeting.

(b) The Respondents argue that there is a list of attendees of which the Secretary General of the IHC was mentioned.

4. In 2009, after the establishment of HI, FIH recognized HI as its member for India replacing IHC and the IOA also disaffiliated the IHF and IWHF. This was challenged before the Delhi High Court, which while deciding that the withdrawal of recognition should be quashed, accepted HI as the FIH member for India.

5. In 2010, IWHF merged into the IHF and all assets were transferred to the IHF and the former was dissolved. IHF claims that since then, the functions of IHC have been discharged by the IHF as the successor of the IHC. Subsequently, the IHC was also dissolved.

6. In 2011, a panel was set up to look at the claim of IHF and in the following year, FIH wrote to the IOA to invite both IHF and HI to explain why they met FIH's membership criteria. This assessment was to be done by a special committee. This committee recommended that HI should be endorsed as a member of the FIH. It may be noted that FIH had also made suggestions to the IOA regarding criteria to be considered for membership.

7. Further, in the assessment done by the FIH, it had been decided that the Old Statutes would apply but the FIH Congress approved a revised procedure for resolving competing claims and those were now applicable. An independent FIH committee was established which also decided that the HI was the member.

8. The present appeal concerns the decision of the FIH Congress recognizing HI as the FIH Member for India.

B. Submissions of Parties

(a) IHF (Appellant)

9. The Appellant made the following contentions:

(a) The FIH applied the incorrect statute in making its decision.

(i) The *Gibraltar Football Association v UEFA*[115] was relied upon to show that substantive provisions could not be applied retroactively whereas procedural changes could be. The changes made in the FIH Congress were substantive and thus, the old statute had to apply and the new changes were inapplicable.

(ii) The amendment had been contrived and made specifically in light of the dispute with IHF and was not in good faith.

(iii) IHF was a befitting candidate because it had already been a member, incumbent even.

(iv) The independent committee was biased and applied criteria that had been suggested by the IHF itself and which were not in force at the time.

(b) The FIH wrongly relied on Article 2.4(d) for procedure, which applies only where membership is vacant and FIH membership was not vacant.

10. The first Respondent FIH made the following contentions:

(a) The FIH applied the correct statute:

(i) The Statutes did not vary substantively and the changes were merely procedural and the change from the IOA to an independent committee was procedural.

(ii) The amendments made were necessary and in good faith to prevent a serious obliqueness because on the one hand, the IOC had to choose between the competing claims and on the other, the Olympic Charter allowed the IOC the discretion to choose the body it wanted to recognize.

(iii) The statutes did not have any criteria on competing claims and it could not be said that the criteria were being 'changed'. Fresh crtieria were being 'proposed' for perusal by the FIH.

(iv) That FIH Committee used the same criteria as had been suggested to the independent committee did not show that the process was unfair.

(b) Application of article 2.4(d) was correct as there had been a vacancy. The IHC had been dissolved before the IHF succeeded to it and thus, it cannot claim to be its true successor. Further, membership is not transferable on dissolution.

C. Judgment

11. The tribunal took note of the Gibraltar principles that rules concerning procedure apply immediately whereas substantive rules apply only if they were in force at the time when the facts occurred. The tribunal also noted Article 23 of the Swiss Constitution which guaranteed freedom of association. Swiss law gives broad autonomy to its associations in respect of the composition of their memberships.

12. Change in statutes: The tribunal concluded that there was a change in the statute after amendment. The criteria were introduced to address the complex situation of the competing claims when the old statute provided no solution. Further, the changes were held to be substantive in nature. However, they were justified, necessary and neutral in their effect. There was no bias in their enforcement.

13. IHF argued that an entity could claim an exclusive right to govern hockey even when it did not have the right but it could not declare that it had the exclusive right unless it in fact had that right. In short, IHF argued that there was a difference between 'claiming' a right and 'declaring' it. This was rejected by the tribunal on

the ground that the text of the provision was unequivocal and did not allow the skewed interpretation.

14. Vacancy: Article 2.4 of the New Statute provided for the criteria to be followed where 'membership for a particular country is vacant' and there are competing claims for membership. The tribunal held that this vacancy requirement cannot be a prerequisite because that would leave the question of competing claims without a vacancy unanswered.

15. The tribunal concluded that the appeal was liable to be dismissed and confirmed the decision of the IHF Congress, thereby paving way for the recognition to HI as the governing authority.

D. Analysis

16. The situation prevailing between IHF, FIH and HI is rather unique since rarely do competing claims to be the governing authority of a sport arise. This dispute arose because of the replacement of IHF (erstwhile NSF) with HI which received recognition from the FIH as well as the Ministry of Youth Affairs and Sports.

17. This case could have exponentially increased in complexity because of the pending matters in Indian courts. While this would not have affected the tribunal's jurisdiction, the ramifications of having conflicting decisions are real and serious. It is laudable that the CAS acknowledged the pending domestic matters in the award while exercising its jurisdiction.

18. The situation began with a 2010 decision of the Delhi High Court- *IHF v Union of India and others*,[116] which touched upon questions concerning changes in the statutes and autonomy of sports governing bodies. In the judgment, the disaffiliation and de-recognition of the IHF by the IOA was quashed. This was further challenged in another Writ Petition, which was also dismissed. Following this and the heightening turf between HI and IHF, FIH was compelled to modify its rules regarding membership.

19. While FIH could continue to recognize HI contrary to the quashing of de-recognition of the IHF, this would only create greater difficulties in obtaining government support for teams participating in international competitions to represent India. This was, in fact, faced by the men's and women's hockey teams which at the time had been representing India in the Commonwealth Games because the selection committee was defunct.

20. The criteria for recognition following this dispute changed in India with the

E. Conclusion

21. The dispute between competing claimants for the right to govern a sport in the country brings to light multiple legal and other considerations. The applicable rules may be unable to answer peculiar questions as was the case herein. Rules in sports continue to evolve and be shaped by the disputes arising out of various circumstances. However, the primary consideration would be protecting fairness and integrity of the sport and the discretion of governing bodies is crucial for achieving this purpose.

(XII) Paris Saint-Germain and Neymar da Silva Santos Junior v UEFA

A. Background

1. On 6 March 2019 in a match of the UEFA Champions League, Neymar da Silva Santos Junior (the "**player**") had not participated due to an injury but was present in the stadium. Due to a decision of penalty rendered by the referee, the player's club had been eliminated from the tournament. Some players disputed with the referee which resulted in a clash.

2. Shortly after the match, the player posted an image on Instagram with an offensive message the subjects of which were the referees of the game. The player was alleged to have had 120 million followers. The player deleted the post shortly afterward. He was also internally disciplined by the club.

3. The UEFA Ethics and Disciplinary Committee initiated an investigation against the player because of the comments. A UEFA appeal followed which confirmed the suspension of the player from 3 UEFA matches. The present appeal was subsequently filed on 18 July 2019. While the player has acknowledged his mistake, no formal apology has been issued in respect of the statements made in the Instagram post.

B. Parties' Submissions

(a) Paris Saint-Germain and Neymar da Silva Santos Junior (Appellants)

4. The Appellants pray for the setting aside of the EUFA decisions and elimination of the suspension imposed on the player. This prayer is made on the following grounds:

(a) Article 24 of the UEFA Disciplinary Regulations provides that the burden of proof of showing the commission of a sanctionable violation to the comfortable satisfaction of the panel rests with the Respondent.

(b) The statement is contended to be 'mere and reasonable observation' of which translations were made available. According to the player, he was

expressing a general vexation without attacking any one person, including the referee.

(b) That the statement construed as an insult to the Video Assistance Referees was based on a misconception of facts as to who took the decision of imposing a penalty. The incorrectness of the penalty was also pointed out by many others. However, the player did not intend to insult the referee.

(c) The player argued that Article 15 of the said regulations did not apply to him because it applies to a player while participating in the match. However, the player was not playing in the match.

(d) The statements were at the most abusive language but did not amount to insulting language within the meaning of article 15.

(f) There are mitigating circumstances which should have been taken into account including the prompt deletion of the post, internal disciplining by the club, disproportionality of the sanction, the statement being made in the heat of the moment, etc.

(b) UEFA

5. The Respondent prays that the decisions of the UEFA be confirmed on the following grounds:

(a) The language used was both abusive and directed toward the officials.

(b) The interpretation of the statement must be determined based on how the player's followers and the press globally understood it.

(c) The player being professional and experienced knew or ought to have known that the review was performed by the video assistance referees. Thus, nothing in the statement was mere or reasonable.

(d) Article 15 applies to the player as well because it refers to competition matches and does not require the player to actually participate or even be physically present at the stadium.

(e) The player has 120 million followers on Instagram which must be treated as an aggravating factor. Further, no remorse was shown by the player at any point.

C. Judgment

6. The Court concluded that the statement has been properly translated. Further, the scope of Article 15 includes insulting conduct other conduct that is otherwise

with match competitions cause greater harm to the Respondents as they receive more attention. A wide interpretation is given to what includes competition matches so as to include the present factual matrix.

7. Under Article 15, the statement must be directed at the official. The player's contention that he was confused about who rendered the decision was rejected on the ground that he was an experienced player. Thus, the statements were addressed to the match officials and within the meaning of Article 15.

8. Article 15 differentiates between statements that are abusive and those which insult officials. The sanction for the former is two years and the latter, three years. It is often difficult to draw a distinction between the two types while assessing a statement. It was contended that due to this legal uncertainty, the lower sanction should apply. The arbitrator decided that absent a clear guideline, the provision is to be applied keeping in view the circumstances and the fact that suspension may exceed the minimum sanction in the provision.

9. An objective standard must be followed in ascertaining the gravity of the infraction. How a group of objective and reasonable third persons understands and interprets a statement is relevant for this purpose. In this analysis, the Court took into consideration the claim that the statement was made in the heat of the moment and regarded it as an aggravating factor contrary to the claim of a mitigating factor. The outburst of the player was held to be unacceptable and thus, a suspension of two matches was imposed.

10. It was contended that there are mitigating circumstances and that he did not intend to cause harm by the post. Since there was room for misinterpretation in the post, the player should have known the effect of his words. Further, the existence of 120 million followers of the player is not an aggravating circumstance.

D. Analysis

11. Several disciplinary matters surround a violation of competition or league rules that are decided by disciplinary committees of the League or the ISF. The case involving Neymar received a lot of attention but it is by no means an exceptional matter. Disciplinary cases can concern a variety of subject-matters such as match-fixing and corruption, physical or verbal abuse, betting, etc.

12. Many of these cases have resulted in the evolution of generally-phrased principles into specialized regulations for different categories of violations. For instance, in the 2009 *Pobeda* case involving match-fixing, the applicable rules provided for 'loyalty, integrity and sportsmanship' which were regarded as having

match-fixing.

13.Similar regulations have come into being such as International Cricket Council's Anti-Discrimination Policy 2019 which are useful in light of allegations of racial discrimination that are often made in sports. An example is that of Darren Sammy, who recently claimed that he was called with racial slurs during his stint in IPL's Hyderabad franchise.

14. In cases such as the one at hand involving verbal abuse, several conditions come into play in the awards. The circumstances of the making of the comment, its inherent nature and how it is understood by the public have been used as aggravating or mitigating factors in determining the proportionality of the sanction. Another claim that is often made is that the comment was made in the heat of the moment, which must be regarded as a mitigating factor.

15. The heat-of-the-moment argument was discussed in *Jan Lach v World Archery Federation*.[117] The CAS arbitrator ruled against the player on the ground that he had time to calm down and there was no reason to regard the behaviour as having been made in the heat of the moment. By implication, this could mean that heat of the moment is a valid mitigating factor.

16. According to the arbitrator in the Neymar case, the fact that the post was made in the heat of the moment was in fact treated as an aggravating factor, which seems inconsistent with the manner in which previous awards have looked at the contention. In any event, the burden of showing such mitigating factors is very high as can be seen from cases like *Cyril Sen v ITTF*. Mr. Sen was accused of having passed denigrating and sexually-coloured remarks against a white badge Indian umpire. The only reason that the appeal was upheld was because there was absolutely no evidence led by the Respondent and the case sufficiently makes its exceptional nature explicit.

E. Conclusion

17. Disciplinary matters involving breaches of competition rules are oftentimes appeal before the CAS and rejected because the burden to establish a defense is very high. This is primarily due to the inherent seriousness of the violations and the risks involved in condoning them. Thus, cases of verbal abuse, sexual harassment, racism, etc. rarely exculpate the player. Suspension or even disqualification are regarded as appropriate sanctions in these cases.

(XIII) Russian Doping Scandal

A. Background

1. The Russian doping scandal began with the investigation of Mr. Richard

McLaren, who submitted a report to the World Anti-Doping Agency with the details of the 'systematic and centralized cover-up and manipulation' of the doping control procedures.

2. Several cases were brought by the IAAF against the Russian Athletic Federation ("**RUSAF**") and Russian athletes for doping violations. Two such awards are *IAAF v RUSAF and Anna Pyatykh*[118] and *IAAF v RUSAF and Ekaterina Volkova*.[119]

3. The case could have been heard by a sole arbitrator under the IAAF Rules or by a CAS panel and in both cases, for different reasons, the matter was submitted to the CAS. Ms. Anna Pyatykh ("**first athlete**") is a Russian athlete specializing in triple jump and Ms. Ekaterina Volkova ("**second athlete**") is a Russian middle and long distance runner, both of whom are international-level athletes under the IAAF Anti-Doping Rules.

4. Both athletes were tested for doping and their tests were positive for prohibited substances as per WADA's Prohibited List. The first athlete was suspended for violating Rule 32.2 of the IAAF Rules and two distinct violations were involved:

(a) On the basis of a retested sample collected in 2007, which the athlete attempted to justify on the basis of supplements she had been consuming. However, IAAF considered this an inadequate explanation.

(b) On the basis of the Moscow washout testing. The retest showed the presence of an exogenous prohibited substance and the first athlete's name was listed in the unpopular Washout Schedule. She was suspended temporarily by IAAF. Professor Richard McLaren's reports indicated the following:

(i) The Moscow Laboratory operated to protect Russian athletes within a system that was State-prescribed.

(ii) The Sochi Laboratory swapped samples to allow doping athletes to participate in international sports.

(iii) The Russian Sports Ministry controlled the manipulation of results and sample swapping.

(iv) Washout-testing was being done by Russian authorities whereby athletes who were likely to test positive were determined but the results uploaded to the WADA database were always negative. Unofficial tests were performed regularly to ensure that all athletes tested 'clean' for competitions. These unofficial results were updated in a Washout Schedule.

5. The second athlete underwent a doping test at the Beijing Olympics 2008 which did not yield any positive result. However, when further tests were performed on

the sample, a prohibited substance had been discovered. Both athletes were provisionally suspended by the IAAF.

B. Submissions of Parties

(a) IAAF

6. The broad submissions of the IAAF in both cases were:

(a) The reports indicated that a 'duchess cocktail' containing the substances was consumed by the athletes, the testing period for detection of which was very short. A massive cover-up through unofficial testing was undertaken by Russian authorities.

(b) The prohibited substances were detected in the samples of the athletes in the retests performed by IAAF. The athletes waived their right to get Sample B tests and consequently, the IAAF's burden to establish an anti-doping rule violation is fulfilled.

(c) According to Rule 33.3 of the IAAF Rules, an anti-doping rule violation may be established by any reliable means such as admissions, statements of third persons, witness statements, expert reports and other documentary evidence.

7. On these grounds, it was prayed that the athlete be found guilty of the violation, be declared ineligible for future participation and be stripped of her competitive results for the time that elapsed.

(b) Anna Pyatykh

8. The Respondent made the following submissions:

(a) The rested samples yielded positive results because of consumption of potentially contaminated products like dietary supplements.

(b) In respect of the washout allegations, it was submitted that the athlete has always tested officially in strict adherence with the WADA Code and IAAF Rules and no unofficial urine samples were provided by her.

(c) The report is argued to be an unreliable source because it is based on scrap documents which cannot be a proper substitute for Laboratory documentation. Further, all tests must meet the international standards for testing and the unofficial tests cannot be presumed to be in compliance with the same.

9. On these grounds, the first athlete prays that the allegations against her be dismissed and alternatively, a reduced and proportionate sanction be imposed on

(c) Ekaterina Volkova

10. The second athlete did not file an Answer or participate in the proceedings.

C. Judgments

11. Two questions were addressed by the arbitrators- whether there was an anti-doping rule violation and if yes, what the appropriate sanction was. The award notes that the prohibited substance was found in the athletes' samples and the athletes waived their right to get a Sample B test.

12. In addressing violations of Article 32.2 of the IAAF Rules, the arbitrators noted that athletes are responsible for knowing what an anti-doping rule violation is and substances which are included in the prohibited list. Further, all athletes have the duty to ensure that no prohibited substance has entered their bodies and consequently, intent, fault or negligence are not ingredients of a violation.

13. The reports confirm the doping cover-up and manipulation which was based on cyber and forensic analysis of documentary evidence. While the arbitrators acknowledge that this evidence comes with challenges, reliability of the sources is not so established that questions can be raised. Such circumstantial evidence can, therefore, be accepted even if they do not meet the testing standards.

14. The first athlete has failed to show how her name appeared in the washout schedule and has merely contended that all her tests were official. This was rejected. Furthermore, the second athlete has made no submissions before the arbitrator and in both cases, the arbitrators conclude that there has been an anti-doping rule violation. The first athlete was declared ineligible for four years and the second athlete for two years.

D. Analysis

15. Over 1000 Russian athletes competing in summer, winter and Paralympic sports, were involved in or benefiting from manipulations of laboratory data to conceal positive doping tests. The reports, conclusions of which were questioned by many, were based on a thorough investigation, interviews, forensic evidence and data obtained from under-the-table sources. These cases confirm the increasing role of expert evidence in deciding rule violations, especially where data can be discreet.

16. Dr. Grigor Rodchenko became the Director of the Moscow Laboratory, following which the Duchess cocktail which was optimized for poor detection was administered to several athletes in 2012. The Russian Security Service, FSB, surreptitiously opened samples and swapped them with older samples of the

Anti-doping Agency ("**RUSADA**") was suspended in 2015. Russia, as a country, has been banned from the Tokyo Olympics by the WADA Executive Committee and a CAS appeal against this decision is pending.

17. Various cases were brought against the athletes caught for doping. Apart from Anna Pyatykh and Ekaterina Volkova, athletes like Elena Slesarenko, were also named and declared ineligible by CAS. The key questions examined by several panels include- whether there was an anti-doping rule violation and whether the suspension of RUSADA extended to the eligibility of Russian athletes. If the athletes were mentioned in the Washout Schedule or there was other evidence of doping, they were deemed to have committed a violation.

18. In *Russian Olympic Committee v IAAF*,[120] the CAS concluded that the athletes were ineligible because of the sanctioning of RUSAF under Rule 22.1(a) even though some of the athletes had not committed a violation. The panel did not consider the rule as a 'sanction' but rather a rule of eligibility to conclude that it did not have to meet the test of proportionality. Thus, all Russian athletes had been declared ineligible to compete at the time.

19. An interesting instance of an athlete who surpassed the CAS is that of *Darya Klishina*[121] who was implicated in the McLaren reports but won the matter before the CAS. The question was whether the criteria of Rule 22.1 had been satisfied in relation to compliant drug-testing. The CAS award held that even though she may apparently have benefitted from the non-compliant Russian testing, she was subject to fully compliant drug-testing in the United States where she had been training. Consequently, she continued to be eligible to participate in international sports.

20. Several cases of doping have emerged in the history of sporting events- Lance Armstrong, Tyson Gay, Luiza Galiulina- but none compare to the magnitude of the Russian scandal which showed an institutionalized failure of to protect the integrity of sports.

E. Conclusion

21. The Russian doping scandal tainted the institutions conducting doping tests and brought various questions to the fore- methods of testing, reliability of data and importance of expert evidence. Doping violations are the most common before the CAS and attack the very core of the integrity of sports. Thus, CAS takes doping matters seriously and imposes severe punishments unless the high burden

(XIV) Tamil Nadu Football Association v Pennar Senior FC and Ors

A. Background

1. The petition was filed under section 8 of the Arbitration and Conciliation Act 1996 to refer the parties to arbitration as against a suit which was filed by the 12 football clubs (Respondents) herein. The suit was brought by the Respondents for declaring notices convening the Annual Congress of the football Association null and void and for an injunction of the office bearers from discharging their functions.

2. A suit was brought by the Respondents herein for wilfully disobeying the injunction and the Applicant herein filed another suit for vacating the injunction so that the matter can be referred to arbitration. The Court addressed collectively all the petitions and decided to hear the application under section 8 preliminarily.

B. Submissions of Parties

(a) Tamil Nadu Football Association (Applicant)

3. The Applicant refers to several provisions of the Statutes of its Association and those of the District Football Association. The statutes provide that an option for recourse to arbitration would be created in the Association for the resolution of internal matters. Further, they expressly prohibit recourse to ordinary courts of law for resolution of matters which are formulated within arbitral jurisdiction.

4. The Applicant contends that:

(a) In view of the aforesaid provisions, any dispute between the Association and its members and clubs had to be referred to arbitration and the suit could not proceed due to section 8 of the Act.

(b) The Applicant has a right to submit the dispute to arbitration and the Respondents cannot approach the Court directly.

(c) The Association nominated a panel of arbitrators.

(b) Pennar Senior FC and Ors (Respondents)

5. The Respondents made the following contentions:

(a) The arbitration clause is inapplicable between the parties because the Respondent football clubs have not been recognized as members by the Applicant Association. Letters were submitted as proof of the refusal to accept membership.

(b) The Statutes also require that the Association create a permanent panel of

Applicant association has failed to fulfil these requirements.

(c) The Applicant was also required to name an arbitral tribunal and its failure to do so no longer requires the Respondents to refer the matter to arbitration.

(d) The Statutes set out the jurisdiction of the arbitrators and limit it to appeals against decisions and disciplinary sanctions only after all the previous remedies within the Association are exhausted. Thus, arbitration is envisaged as a forum for appeal rather than for deciding independent disputes outside the limits set out in the statutes.

C. Judgment

6. The Court observed that the panel of arbitrators was for a specific dispute between individuals unrelated to the present matter and not generally named as required under the statutes. Thus, the Court concluded that the provisions of the Statutes to this extent have not been complied with by the Applicant-Association and the Respondents cannot be forced to refer the matter to arbitration.

7. The Statutes also set out the nature of the matters that were to be referred to arbitration. They were in the nature of stages of appeal against decisions and other disciplinary sanctions which had to be exhausted prior to arbitration. Thus, the arbitral tribunal was contemplated as an appellate authority. Consequently, it cannot be said that there was an arbitration agreement between the present parties. Thus, the application under section 8 was dismissed.

D. Analysis

8. The dispute in question was between a football association and what was claimed to be its club. While an argument was raised concerning the recognition of the membership of the club by the Association, it was not a ground on which the Court dismissed the application. Thus, the decision was rendered only on the basis of two grounds- failure to set up a permanent list of arbitrators and intention to refer matters to arbitration as an appellate mechanism rather than resolving all kinds of disputes.

9. Another example of a similar dispute is *Tirunelveli District Football Association v President, Tamil Nadu Football Association*[122] wherein the dispute was between a district and state football association. The question before the Court was whether the Writ Petition was maintainable in the presence of an alternative remedy, that is, recourse to arbitration. The Statute of the State Football Association provided that internal disputes between the association and its members would be referred to arbitration. Thus, the petitions were held not to be maintainable.

10. Consequently, so long as the disputes concern internal matters of state and

district associations, the remedies internally available would be preferred and arbitration may be preferred to resolve such disputes whether originally or as an appellate authority.

E. Conclusion

11. NSFs and State Associations generally have arbitration clauses to ensure that internal disputes are resolved by experts with sufficient knowledge of the sport and the functioning of associations relating to the sport. Thus, arbitration is preferred over courts of law to resolve disputes. However, certain criteria stipulated in the Statutes of NSFs must have been met for this purpose.

---

[1] PWC, *Changing the Game: Outlook for the global sports market to 2015*, p. 4 (Dec. 2011), https://www.pwc.com/gx/en/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf [*hereinafter* **PWC Outlook**]; see also KPMG & CII, *The Business of Sports* (Sept. 2016), https://assets.kpmg/content/dam/kpmg/in/pdf/2016/10/The-business-sports.pdf [*hereinafter* **KPMG-CII**].

[2] Business Wire, *Sports - $614 Billion Global Market Opportunities & Strategies to 2022* (May 14 2019), https://www.businesswire.com/news/home/20190514005472/en/Sports---614-Billion-Global-Market-Opportunities; *see also* The Business Research Company, *Sports Global Market Opportunities and Strategies* (May 2019), https://www.thebusinessresearchcompany.com/report/sports-market.

[3] KPMG-CII, *supra* note 1; see also Hervé Collignon, *Winning in the business of sports*, KEARNEY.COM (Feb. 15, 2014), https://www.kearney.com/communications-media-technology/article?/a/winning-in-the-business-of-sports; see also KPMG, *Digital Classifieds*: In India 2020 (2016), https://assets.kpmg/content/dam/kpmg/in/pdf/-2016/09/Digital-classifieds-India-2020_new.pdf.

[4] Hervé Collignon, *The Sports Market*, KEARNEY.COM (2009), https://www.de.kearney.com/communications-media-technology/article?/a/the-sports-market [*hereinafter* **The Sports Market**].

[5] PWC Outlook, *supra note* 1, at 31.

[6] The Sports Market, *supra note* 4, at 4.

[7] Press Information Bureau, *Sports Sector gets the Infrastructure Status*, MINISTRY OF YOUTH AND SPORTS, GOVERNMENT OF INDIA (Sept. 30, 2016); *see also* The Pioneer, *Sports Infrastructure gets Industry Status*, DAILYPIONEER.COM (Feb. 23, 2016), https://www.dailypioneer.com/2016/sports/sports-infrastructure-gets-industry-status.html.

[8] The Commonwealth Games Federation, *Delhi 2010 Post Games Report*, THECGF.COM (Oct. 3-14, 2010), https://thecgf.com/games/delhi-2010#documents.

[9] M. Shahbaz, *India Hockey offered double profits to get 2023 World Cup*, INDIANTELEVISION.COM (Jan. 7, 2020), https://www.thehockeypaper.co.uk/articles/2020/01/07/india-hockey-offered-double-profits-to-get-2023-world-cup.

[10] *Sports Sponsorship in 2017 up by 14%*: SportzPower-GroupM Report, INDIANTELEVISION.COM (Mar. 21, 2018), https://www.indiantelevision.com/mam/marketing/mam/sports-sponsorship-in-2017-up-by-14-groupm-1-80321.

[11] *Duff and Phelps, IPL Brand Valuation Report 2019*, p. 4 (Sep. 20, 2019), https://www.duffandphelps.com/insig-hts/publications/valuation/ipl-brand-valuation-report-2019.pdf.

[12] FICCI, *Business of Sports: Aiming Higher… Reaching Further!*, p. 20 (Nov. 06, 2014), http://ficci.in/spdocume-nt/20465/knowledge-paper-Sports.pdf [*hereinafter* **FICCI Knowledge Paper**].

[13] *Id*, at 16.

[14] Vidhi Choudhary, *Pro Kabaddi League set to double its advertising revenue*, LIVEMINT.COM (Aug. 2, 2017), https://www.livemint.com/Sports/WYJqqYw0EwjF2DDCYCnbxJ/Pro-Kabaddi-League-set-to-double-its-advertising-revenue.html [*hereinafter* **Vidhi Choudhary**].

[15] Simon Atkinson, *Kabaddi gets the IPL treatment*, BBC.com (Aug. 7, 2014), https://www.bbc.com/news/busine-ss-28660432.

[16] Vidhi Choudhary, *supra* note 14.

[17] Nandakumar Marar, *India's ATP event becomes Tata Open again*, THEHINDU.COM (Dec. 6, 2017), https://www.thehindu.com/sport/tennis/indias-atp-event-becomes-tata-open-again/article21279622.ece.

[18] Tata Open Maharashtra, ATPTOUR.COM (Feb. 3-9, 2017), https://www.atptour.com/en/tournaments/pune/891/o-verview?detailTab=points

[19] Amit Chaudhary, *Pro Wrestling League gets a grip*, TheEconomicTime.com (Mar. 1, 2018), https://economicti-mes.indiatimes.com/news/sports/pro-wrestling-league-gets-a-grip/articleshow/55503559.cms-?from=mdr.

[20] Tushar Dutt, *Hockey India rings in the riches,* TimesofIndia.com (Apr. 16, 2015), https://timesofindia.indiatim-es.com/sports/hockey/top-stories/Hockey-India-rings-in-the-riches/articleshow/469-41479.cms.

[21] FICCI Knowledge Paper, supra note 12, at 22.

[22] Team Sports Star, *PBL Auction- As it happened: PV Sindhu, Tai Tzu fetch big bucks, Chennai, Pune build strong teams*, THEHINDU.COM (26 Nov. 2019), https://sportstar.thehindu.com/badminton/pbl-premier-badminton-league-live-auction-news-squads-commentary-pv-sindhu-saina-nehwal-kidambi-srikanth-mumbai-bengaluru-hyderabad-north-eastern/article30083998.ece.

[23] FICCI Knowledge Paper, *supra* note 12.

[24] Bindu Menon, *Sony Pictures to broadcast Premier Futsal matches live,* BUSINESSLINE.COM (May 27, 2016), https://www.thehindubusinessline.com/news/sony-pictures-to-broadcast-premier-futsal-matches-live/article8654911.ece; *see also* Abhijeet Kulkarni & Zenia D'Cunha, *Premier Futsal yet to clear 'promised payments' of Indian players from last year,* SCROLL.IN (Sep. 27, 2017), https://scroll.in/field/852047/premier-futsal-yet-to-clear-promised-payments-of-indian-players-from-last-year.

[25] KPMG-CII, *supra* note 14, at 39.

[26] Raul, Which Professional Sports Leagues Make the Most Money?, HOWMUCH.NET (July 1, 2016), https://howmuch.net/

articles/sports-leagues-by-revenue.

[27] FICCI Knowledge Paper, *supra* note 12, at 7; see also PWC Outlook, *supra* note 1, at 5.

[28] Saptarshi Ray, *How India's ISL became world football's fourth biggest league*, THEGUARDIAN.COM (Dec. 23, 2014), https://www.theguardian.com/football/blog/2014/dec/23/india-super-league-fourth-biggest-league.

[29] KPMG-CII, *supra* note 14, at 26.

[30] *Dangal, Baba Ramdev and Olympics: How Pro Wrestling won over Rural India*, ZAPR.IN (2017), https://blog.zapr.in/tv-analytics/the-numbers-behind-pro-wrestling-leagues-large-rural-share.

[31] §§ 7 & 44, Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (2019).

[32] Chloro Controls India Private Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 (India).

[33] § 5, Arbitration and Conciliation Act, No. 26 of 1996, India Code (2019).

[34] Kunal Dhyani, *Five Sports Leagues which ran into the dead end in 2018*, INSIDESPORT.CO (May 2, 2019), https://www.insidesport.co/five-sports-leagues-which-ran-into-the-dead-end-in-2018/.

[35] Sporty Solutions Private Limited v. Badminton Association of India & Others, OMP (I) (Comm)-362.2017 (India).

[36] Sports & Leisure Worldwide v. Women's Golf Association of India, Arb. P. No. 45/2012 (India).

[37] Sahara Adventure Sports Ltd. v. Board of Control for Cricket in India, Arbitration Petition (L) No. 1442 of 2013 (India); *see also Full text of Pune Warriors' statement*, ESPNCRICINFO.COM (21 May, 2013), https://www.espncricinfo.com/story/_/id/21977540/full-text-pune-warriors-statement; *see also* T.E. Raja Simhan, *Pune Warriors out of IPL as BCCI terminates contract*, BUSINESSLINE.COM, (Oct. 16, 2013), https://www.thehindubusinessline.com/news/sports/pune-warriors-out-of-ipl-as-bcci-terminates-contract/article20681776.ece1.

[38] Amol Karhadkar, *Kochi Tuskers seek IPL re-entry after winning arbitration,* ESPNCRICINFO.COM (July 8, 2015), https://www.espncricinfo.com/story/_/id/20628639/kochi-tuskers-seek-ipl-re-entry-winning-arbitration; *see also* Tariq Engineer, *Kochi's foreign players asked to sue owners,* ESPNCRICINFO.COM (Jan. 13, 2012), https://www.espncricinfo.com/story/_/id/22343746/indian-premier-league-kochi-foreign'players-asked-sue-owners; *see also Bombay HC rejects Kochi Tuskers plea against encashing bank guarantee*, BUSINESSSTANDARD.COM (Jan. 20, 2013), https://www.business-standard.com/article/economy-policy/bombay-hc-rejects-kochi-tuskers-plea-against-encashing-bank-guarantee-111092200045_1.html.

[39] DCHL v. BCCI, Arbitration Petition (L) No. 1238 of 2012 (India); *see also* BCCI v. DCHL, Arbitration Appeal No. 46 of 2012 (India); *see also* DCHL v. BCCI, MANU/SCOR/66664/2012 (India); *see also* DCHL v. BCCI, Kamla Landmarc Real Estate Holdings, Arbitration Petition (L) No. 1352 of 2012 (India).

[40] Rustam Sethna, *The need to res-structure Indian football*, SPORTLAW.IN (Oct. 1, 2018), https://sportslaw.in/home/2018/10/01/the-need-to-re-structure-indian-football.

[41] *AIFF runs out of money, unable to pay prize money to I-League clubs,* BUSINESSSTANDARD.COM (June 27, 2019), https://www.business-standard.com/article/pti-stories/aiff-runs-out-of-money-awaits-clearance-of-dues-by-commercial-partner-119062700531_1.html.

[43] *Football Players' Association to approach AIFF after East Bengal's investors terminate contracts,* SCROLL.IN (May 10, 2020), https://scroll.in/field/961577/football-players-association-to-approach-aiff-after-east-bengals-investors-terminate-contracts.

[44] Pulasta Dhar, *The Curious Case of Abinash Ruidas and the Identical Signatures,* NATIONOFSPORT.COM (Oct. 3, 2017), https://www.nationofsport.com/stories/abinash-ruidas; *see also* Arka Bhattacharya, *The curious case of footballer Abinash Ruidas' contract situation at East Bengal*, SCROLL.IN (July 18, 2017), https://scroll.in/field/843999/the-curious-case-of-footballer-abinash-ruidas-contract-situation-at-east-bengal.

[45] MUMBAIINDIANS.COM, https://www.mumbaiindians.com.

[46] *Egypt sports officials apologise to football star Mo Salah for image rights scandal*, THENEWSARAB.CO (May 1, 2018), https://english.alaraby.co.uk/english/news/2018/5/1/egypt-officials-apologise-to-footballer-salah-for-image-scandal; *see also* Tom Scourfield, *Image rights and the Mohamed Salah dispute*, CMS.LAW, https://cms.law/en/bra/publication/image-rights-and-the-mohamed-salah-dispute.

[47] Mastercard International Incorporated, Plaintiff-appellee, federation Internationale De Football Association, Defendant-appellee, v. Visa International Service Association, Inc., Non-party-appellant, 471 F.3d 377 (2d Cir. 2006).

[48] Rhiti Sports Management Private Limited v. Power Play Sports and Events Limited, (2018) SCC OnLine Del 8678 (India).

[49] Sahara Adventure Sports Ltd. v. Maharashtra Cricket Association and Ors., Arbitration Petition No. 416 of 2013 (India).

[50] Art. 3.10, Guidelines for the recognition of National Sports Federations, Annexure II, National Sports Development Code 2011.

[51] Guidelines for the recognition of National Sports Federations, Annexure II, National Sports Development Code 2011.

[52] Press release by the Ministry of Youth Affairs and Sports dated 17 June 2016, Press Information Bureau, Government of India

[53] Art. 191, Federal Statute on Private International Law.

[54] Art. 190, Federal Statute on Private International Law.

[55] Art. 192, Federal Statute on Private International Law; *see also* Rule 59, CAS Procedural Rules.

[56] Guillermo Cañas v. ATP Tour, 4P.172/2006, ¶ 4.3.2.2.

[57] Art. 6, European Convention on Human Rights.

[58] X v. Fédération Internationale de Football Associations, 4A.260/2017.

[59] Section 1032, Code of Civil Procedure as promulgated on 5 December 2005.

[60] Cour d'Appel Bruxelles, (JT) 2018; 2016/AR/2048.

[61] Sala de lo Conencioso-Adminsitrativo Seccion Quinta Sentencia, num. 708/2017.

[62] Rule 38, CAS Procedural Rules.

[63] Rule 64, CAS Procedural Rules.

[64] Rule 39, CAS Procedural Rules.

[65] Rule 64.2, CAS Procedural Rules.

[66] Rule 42, CAS Procedural Rules.

[67] Rule 43, CAS Procedural Rules.

[68] Sushil Kumar v. Union of India, 230 (2016) DLT 427 (India).

[69] INDIA CONST. Item 33, List II (State List), Seventh Schedule.

[70] Narinder Batra v. Union of India, (2009) ILR 4 Delhi 280 (India).

[71] *Id.*

[72] Sumati Devi v. National Anti-Doping Agency, W.P. No. 7448 / 2016 (Del HC) (India).

[73] IAAF v. Athletics Federation of India & Others, CAS 2012/A/2763; *see also* WADA v. Nirupama Devi Laishram, CAS NADA 2012/A/2979; *see also* IAAF v. Athletics Federation of India & Others, CAS 2012/A/2732; *see also* WADA v. NADA and Others, CAS 2016/A/4627, 2016/A/4628, 2017/A/5283; see also WADA v. NADA and Another, CAS 2016/A/4626; see also WADA v. Amit and Another, CAS 2014/A/3869.

[74] WADA v. Narsingh Yadav, NADA CAS OG 16/025.

[75] WADA v. Amit, NADA CAS 2014/A/3869.

[76] Amar Muralidharan v. NADA, Indian National Dope Testing Laboratory, Ministry of Youth Affairs & Sports CAS 2014/A/3639.

[77] Indian Hockey Federation v. International Hockey Federation (FIH) Hockey India, CAS 2014/A/3828.

[78] Dutee Chand v. Athletics Federation of India and Another, CAS 2014/A/3759.

[79] Cyril Sen v. ITTF, CAS 2018/A/5641.

[80] Rahul Kumar and Saket Wali v. Asian Squash Federation and Others, CAS AG 14/001.

[81] Clube Atletico Mineiro v. Huachipato SADP and FIFA, CAS 2018/A/5838.

[82] John Kenneth Hilton v. FIFA, CAS 2015/A/4312.

[83] Club Ateltico Velez Sarsfield v. The Football Association Limited, Manchester City FC and FIFA, CAS 2016/A/4903.

[84] Jeffrey Zina v. Lebanon Olympic Committee, CAS 18/006.

[85] Maria Belen Simari Birkner v. Comite Olimpico Argentino, FASA CAS OG 14/003.

[86] World Sport Group (India) Private Limited v. BCCI, 2011 (3) ArbLR 256 (Bom HC) (India).

[87] World Sport Group (Mauritius Limited) v. MSM (Singapore) Pte Ltd, 2014 (1) ArbLR 197 (SC) (India).

[88] MSM (Singapore) Pte Ltd v. World Sport Group (Mauritius Limited), 2010 (112) BomLR 4292 (India).

[89] Ravi Teja Sharma, Two Officials of Volleyball Federation Claim Authority over Two Leagues, THEECONOMICTIMES.COM

-over-two-leagues/articleshow/51131036.cms?from=mdr.

[90] J Nadarajan v. Chaudhary Avadhesh Kumar. IA No 1 of 2016, http://www.volleyballindia.com/CIRCULARS/o-rd%2003102016.pdf.

[91] Chaudhary Avadhesh Kumar v. Volleyball Federation of India, 2017 SCCOnline Mad 19117 (India).

[92] PTI, *BAI Appoints Sportzlive as Marketing Partner for IBL*, THEHINDU.COM (Sept. 30, 2015), https://www.thehindu.com/sport/other-sports/indian-badminton-league-bai-appoints-sportzlive-as-marketing-pa-rtners-for-ibl/article7706588.ece.

[93] Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam (2019) 7 SCC 236 (India).

[94] PTI, *Sporty Solutionz Moves Court Against BAI*, INDIATODAY.COM (Oct. 29 2015), https://www.indiatoday.in/p-ti-feed/story/sporty-solutionz-moves-court-against-bai-503113-2015-10-29.

[95] M/s Rendezvous Sports World v. BCCI, 2016 SCCOnline Bom 6064.

[96] ESPN, *Kochi Franchise Terminated by BCCI*, ESPNCRICINFO.COM (Sept. 20, 2011) https://www.espncricinfo.co-m/story/_/id/22419276/ipl-news-kochi-franchise-terminated-bcci.

[97] BCCI v. KCPL, AIR 2018 SC 1549.

[98] National Highway Authority of India v. Barhampore-Farakka Highway Limited, FAO (OS) (Comm) 47/2017 (India).

[99] Shyam Telecom Limited v. Icomm Limited, 2010 (116) DRJ 456 (India).

[100] Sahara Adventure Sports Limited v. BCCI, Arbitration Petition (L) No 1442 of 2013 (Bom HC) (India).

[101] Sahara Adventure Sports Limited v. Maharashtra Cricket Association, Arbitration Petition No 416 of 2013 (Bom HC) (India).

[102] Maharashtra Cricket Association v. Shapoorji Pallonji and Company, 2017 SCC Online Bom 8824 (India).

[103] DCHL v. BCCI, Arbitration Petition (L) No. 1238 of 2012 (India).

[104] BCCI v. DCHL, Arbitration Appeal No. 46 of 2012 (India).

[105] DCHL v. BCCI, MANU/SCOR/66664/2012 (India).

[106] DCHL v. BCCI and Kamla Landmarc Real Estate Holdings, Arbitration Petition (L) No. 1352 of 2012 (India).

[107] CR Sukumar, *Deccan Chronicle Holdings Defaults on Loan Payments*, THEECONOMICTIMES.COM (July 5, 2012), https://economictimes.indiatimes.com/industry/banking/finance/deccan-chronicle-holdings-defaults-on-l-oan-payments/articleshow/14683626.cms?from=mdr.

[108] WADA v. Geeta Rani, CAS 2016/A/4627 [*hereinafter* **WADA v. Geeta Rani**].

[109] WADA v. NADA and Mhaskar Maghali CAS 2016/A/4626 [*hereinafter* **WADA v. NADA**].

[110] WADA v. Amit, NADA, CAS 2014/A/3869.

[111] WADA v. NADA, *supra* note 109; *see also* WADA v Nirupama Devi Laishram and NADA, CAS 2012/A/2979.

[112] WADA v. Geeta Rani, *supra* note 108; *see also* WADA v. NADA, *supra* note 109.

[113] IAAF v. RUSAF and Ekaterina Galitskaia, CAS 2018/O/5712.

[114] WADA, *WADA Executive Committee Unanimously Endorses Four Year Period of Non-compliance for the Russian Anti-Doping Agency*, WADA-AMA.ORG (Dec. 9, 2019), https://www.wada-ama.org/en/media/news/20-19-12/wada-executive-committee-unanimously-endorses-four-year-period-of-non-compliance.

[115] Gibraltar Football Association v, UEFA, CAS 2002/O/410.

[116] IHF v. Union of India and Ors., 2010 (171) DLT 238 (India).

[117] Jan Lach v. World Archery Federation, CAS 2015/A/4303.

[118] IAAF v. RUSAF and Anna Pyatykh, CAS 2017/O/5039.

[119] IAAF v. RUSAF and Ekaterina Volkova, CAS 2017/O/5331.

[120] Russian Olympic Committee v. IAAF, CAS 2016/O/4684.

[121] Darya Klishina v. IAAF, CAS OG 16/24.

About Us

Singularity Legal is an Asia and Africa focused law firm specialising in international dispute resolution. We are a boutique offering, maintaining our own advocacy capabilities and are fully connected to a global practice specialising in the resolution of high-end, complex disputes. Singularity is best known for:

(a) handling transnational disputes, with considerable expertise in big ticket cross-border disputes across industry sectors;

(b) being well equipped to handle investigations, litigations, arbitrations and mediations across jurisdictions;

(c) unearthing frauds;

(d) obtaining injunctive reliefs and third-party financing, and assisting clients in recovering proceeds;

Since our inception in August 2017, we have handled claims of over US$ 2 billion in cross-border disputes in various sectors including energy and resources, construction and infrastructure, shipping and maritime, sports and entertainment, international trade and business, and private equity and finance. The matters have entailed innovative representation and advice in:

(a) disputes arising out of business relations and projects in various parts of the world including Singapore, India, Israel, Indonesia, Nigeria, Malaysia, Saudi Arabia, Egypt, Sierra Leone, the Philippines, Turkey, The Bahamas, Italy, Kazakhstan, Somalia, USA, UK, and UAE.

(b) disputes governed by various laws such as laws of Singapore, England, Indonesia, India, Israel, Kazakhstan, Turkey, USA, Saudi Arabia, UAE, Egypt; and by transnational rules of law such as International Investment Law, Uniform Rules of Demand Guarantee, World Anti-Doping Agency Rules, and Convention on Contracts for the International Sale of Goods

(c) litigations across Singapore, Indonesia, India, Egypt, Sierra Leone, UAE, UK and Turkey;

(d) arbitrations, settlements and mediations governed by various rules (including SIAC, ICC, LMAA, CAS, SIMC, SMC); and

(e) investigations.

About Expert Talk

The Expert Talk initiative seeks to provide quality continued digital education to professionals, through freely accessible webinars, and a digital library of blogs, alerts, insights and talks, on dispute resolution and litigation finance.

About Sports And Entertainment Practice

Our sports and entertainment team has extensive experience representing clients in this business ,we understand the unique issues presented by operating in the industry, including the importance of establishing and maintaining relationships, controlling sensitive information, maintaining privacy and confidentiality and achieving goals in tight timeframes.

Some highlights of our work are as below:

- Advising Indian and Singaporean promoters of a sports broadcasting company in their dispute against an American multinational media company (SIAC Rules, India seated, Indian Law)
- Advising an Olympic Boxer to defend doping charges a few months before the Tokyo Olympics
- A public interest litigation challenging the constitutional validity of India's National Anti-Doping Code
- Representing 4 Powerlifting Athletes that were tested positive for doping at the 44th National Games, India
- Representing a production house in defending an injunction against release of

About the Authors

Prateek Bagaria is a partner with Singularity and an international disputes specialist with a decade of experience in complex commercial cross-border disputes. Legal 500 describes him as "responsive and dynamic" and "a very driven individual and a good lawyer who handles clients well". He possesses the domain expertise in advising funders and litigants seeking litigation finance.

Client Testimonial:

"Prateek Bagaria leads an exceptional up and coming team with a commercial and highly strategic approach to complex international disputes. One of the best international disputes offerings in India.

- **Mr. Tom Glasgow, CIO (Asia) of Omni Bridgeway**

Sanchit Suri is a counsel at Singularity Legal. He specialises in advising shipping and insurance,sports and entertainment and energy and infrastructure companies, in their shareholder and joint venture disputes, operational disputes and sovereign disputes. He also represents athletes and sports federations in anti-doping and other sports disputes. His range of experience includes advising clients in international arbitrations under various rules like SIAC; and in cross-border disputes before courts in India, Singapore and United Kingdom.

Rohit Shankar is a counsel at Singularity Legal. He specializes in advising construction & infrastructure, and energy & resources companies in their shareholder and joint venture disputes, operational disputes, and debt recovery and enforcement proceedings. He also represents athletes and sports federations in anti-doping and other sports disputes. His range of experience includes advising clients in international arbitrations under various rules like SIAC, and in cross-border disputes before courts in India.

INSIGHT

SINGULARITY

LEGAL

113-B, Mittal Court, Nariman Point,
Mumbai - 400021

t: +91 22 4976 5861
e: singularity@singularitylegal.com

www.singularitylegal.com

LAWYERS OF TOMORROW