Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 5 November 2019,

in the following composition:

Geoff Thompson (England), Chairman
Roy Vermeer (the Netherlands), member
Joaquim Evangelista (Portugal), member
Todd Durbin (USA), member
Juan Bautista Mahiques (Argentina), member

on the claim presented by the player,

Samir Nasri, France
represented by Mr Pierre-Alain Guillaume and Mrs Anna Pivin

as *Claimant*

against the club,

Antalyaspor, Turkey

as *Respondent*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 21 August 2017, the French player, Samir Nasri (hereinafter: *the player or the Claimant*), and the Turkish club, Antalyaspor (hereinafter: *the club or the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from the date of signature until 31 May 2019.

2. According to article 3 of the contract, the player was entitled to receive from the club for the 2017-2018 season the following monies:

   i. EUR 4,000,000 as salary, payable in 10 equal installments of EUR 400,000 each, payable on a monthly basis from August 2017 to May 2018;
   ii. EUR 50,000 as a lump-sum, payable in two equal installments of EUR 25,000 each, payable in September 2017 and February 2018 (note: no specific due date in contract).

3. Moreover, article 9 of the contract referred to the *"exclusive authority"* of the FIFA Dispute Resolution Chamber (DRC) *"to settle any dispute derived from this contract"* as well as the sole competence of CAS as the competent appeal body in such event.

4. On 29 January 2018, the parties concluded a mutual termination agreement (hereinafter: *the agreement*) by means of which the parties agreed to terminate the contract and according to which the club *"(…) irrevocably agrees and accepts to pay EUR 1,200,000 net to the Player"*.

5. In this respect, article 2.3. of the agreement provided the following payment schedule:

   i. EUR 200,000 due on the date of signature of the agreement;
   ii. EUR 200,000 due on 28 February 2018;
   iii. EUR 200,000 due on 30 March 2018;
   iv. EUR 200,000 due on 30 April 2018;
   v. EUR 200,000 due on 31 May 2018 and;
   vi. EUR 200,000 due on 29 June 2018.

   Said article also mentioned that : "[the club] *agrees and accepts to provide the Player with bank cheques for the remaining instalments above on the date of signing this agreement*".

6. Furthermore, Article 2.4. read as follows : "[the club] *agrees and accepts that the receipt of the above mentioned amount by the Player timely and without delay is the key component of* [the agreement]*. Subject to the conditions of the checks are still at the possession of the Player and submitted to the bank duly, in case* [the club] *has insufficient funds in its bank account at the payment date of the bank cheques which*

causes the Player not to collect any of the instalments, the Player shall have the right to notify [the club] *in writing (…) and request the payment of the overdue installments within 7 days. In case* [the club] *fails to pay the Player the overdue installments within the deadline of 7 days,* [the club] *agrees and accepts that the monetary conditions of* [the agreement] *will immediately become null and void without any requirement for another notice and the Player's guaranteed salary from* [the club] *(…) under the contract will be due and payable (…) immediately. In such case,* [the club] *irrevocably agrees and accepts to immediately pay the Player (…) his guaranteed salary (…) under* [the contract] *in the total amount of net 2.400.000 EUR after deducting the payments that is already paid to the Player according to* [the agreement]*, if any"*.

7. Finally, article 3 of the agreement provided that : *"The disputes arising from the present contract may be referred to the Court of Arbitration for Sport (CAS) Ordinary Arbitration in Lausanne. The parties agree that any CAS Ordinary arbitration shall be held in expedited manner before a Sole Arbitrator (…)".*

8. On 14 January 2018, the player put the club in default of payment of the salaries of November and December 2017 under the contract, setting a 10 days' time limit in order in order to remedy the default.

9. As a consequence, and after having signed the agreement (s. point 4), the club paid the first instalment in time as well as the second instalment, albeit late (s. point 5).

10. On 17 May 2018, the player was informed by his bank that the cheque corresponding to the third instalment due under the agreement could not be cashed due to "insufficient account balance", *i.e.* of the club's bank account.

11. On 23 July 2018, the player put the club in default of payment of the last four instalments of the agreement, *i.e.* EUR 800,000, setting a 7 days' time limit in order to remedy the default.

12. On 1 August 2018, the player sent a notice to the club deeming that the financial conditions of the agreement had not been fulfilled and, as a consequence, the player put the club in default of payment in the amount of EUR 2,000,000, as provided by the agreement (s. point 6), setting a 3 days' time limit in order to remedy the default and warning the club that *"In case of failure to pay the total sum above (…),* [the player] *will take legal action against* [the club] *before the Court of Arbitration for Sport (CAS) or any other venue that he may find appropriate"*.

13. Finally, on 19 September 2018, the player reiterated its previous approach setting a 10 days' time limit in order in order to remedy the default, however to no avail.

14. On 19 October 2018, the player lodged a claim against the club in front of FIFA requesting the following:

i. EUR 2,000,000 as outstanding amounts due by virtue of the agreement (s. point 6) ;
ii. Sporting sanctions to be imposed on the club.

The player also requested 5 % interest *p.a.* on the total amount as of 2 August 2018, *i.e.* one day after the requested sum in the player's default notice on 23 July 2018 became due (s. point 11).

15. In his claim, the player explained that after having failed to pay him two monthly salaries at the end of 2017, the player himself had to urge the club to proceed to said payment (s. point 8) in order to start the negotiations leading to the termination agreement.

16. Furthermore, the player underlined that by concluding said agreement, he clearly demonstrated his good faith as he obviously renounced to his second year of contract and also granted the club more time to pay him its debt, especially in different installments (s. point 5).

17. Moreover, the player argued that despite his various attempts, the club failed to pay the agreed sums as per the payment schedule (s. points 9 to 11).

18. As a consequence, the player had no other choice than to apply the clause of the agreement according to which the total amount of EUR 2,400,000 was immediately payable by the club, deducting the amount already paid amounting to EUR 400,000 (s. points 12 and 13).

19. In its response to the claim, the club challenged FIFA's competence to adjudicate the present matter referring to art. 3 of the mutual termination agreement allegedly providing for the exclusive competence of the Court of Arbitration for Sport (CAS) (s. point 7).

20. In support of its allegation, the club referred firstly to the wording of said clause according to which it cannot be contested that said *"arbitration clause"* is mandatory and not optional.

21. Moreover, the club sustained that in contrary to the contract (s. point 3), the agreement *"explicitly states the competence of CAS"* and further referred to FIFA and CAS jurisprudence allegedly ruling that *"(…) even in cases where the arbitration clause is imprecise, the party which, explicitly or implicitly, accepts the arbitration clause is bound by it"*.

22. Finally, the club alleged that the player himself threatened to take legal action in front of CAS in his last two default notices (s. points 12 and 13).

23. As to the substance, the club did not provide any further comments despite having been explicitly invited to do so. It only referred to an alleged recent change of the board of directors and to its hope to solve the present matter in an amicable way .

24. After having been invited to provide his comments regarding FIFA's competence , the player referred as well to the wording of the disputed clause in order to distinguish the word "may" from the word "shall", the first designating *"a modal verb used to express the possibility"*, the second an *"exclusive character"*.

25. In this respect, the player also underlined the jurisprudence of the Swiss Federal Tribunal on such matter in support of his allegation.

26. Moreover, as to the club's arguments related to the terms used by the player in his last default notices (s. point 22), the player rejected said arguments sustaining that said threat to seize CAS was an option along *"any other venue that he may find appropriate"*.

27. As a consequence, the player also reminded that he explicitly underlined in his initial claim that he did not found himself bound by any exclusive arbitration clause as he considered said clause to be optional.

28. In addition, the player deemed that in the alternative, FIFA should be competent in the present matter by the secondary application of the arbitration clause contained in the initial contract (s. point 3).

29. Finally, in the further alternative, the player deemed that the arbitration clause of the agreement (s. point 7) cannot be considered as valid as it contradicts the jurisprudence of the Swiss Federal Tribunal which considered imprecise, contradictory or incomplete arbitration clauses as *"pathological"* clauses, *i.e.* which are to be considered as null and void.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 19 October 2018. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2018; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition June

2019), the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player, with an international dimension.

3. Having said that, the DRC stated that it would, in principle, be the competent body to decide on the present litigation involving a French player and a Turkish club regarding an employment-related dispute.

4. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's Dispute Resolution Chamber to deal with the present case, referring to art. 3 of the mutual termination agreement allegedly providing for the exclusive competence of the Court of Arbitration for Sport.

5. The Chamber equally noted that the Claimant rejected such position and insisted on the fact that FIFA had jurisdiction to deal with the present matter, arguing that he did not found himself bound by any exclusive arbitration clause as he considered said clause to be optional.

6. While analysing whether it was competent to hear the present matter, the members of the Chamber turned their attention to article 3 of the agreement provided that *"The disputes arising from the present contract may be referred to the Court of Arbitration for Sport (CAS) Ordinary Arbitration in Lausanne. The parties agree that any CAS Ordinary arbitration shall be held in expedited manner before a Sole Arbitrator* (…)*".*

7. In view of the aforementioned clause, the members of the DRC were of the opinion that article 3 of the agreement was meant to be considered as an option at the parties 'disposal without any exclusive character, as suggested by the Respondent. This is, without any prejudice to the Claimant's choice to lodge his claim in front of FIFA's Dispute Resolution Chamber.

8. In view of the above, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter had to be rejected and that the DRC is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

9. In continuation, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition June 2019), and considering that the present claim was lodged on 19 October 2018, the June 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

10. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the

arguments and the documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

11. First, the Chamber noted that the parties entered into an employment contract valid as of 21 August 2017 until31 May 2019, which entitled the Claimant to receive EUR 4,000,000 as salary, payable in 10 equal installments of EUR 400,000 each.

12. In continuation, the DRC acknowledged on 29 January 2018 the Claimant and the Respondent signed a mutual termination agreement by means of which the Respondent undertook to pay to the Claimant a total amount of EUR 1,200,000 as follows.

13. In addition, the DRC observed that clause 2.4 of the termination agreement stipulates that*: "*[the club] *agrees and accepts that the receipt of the above mentioned amount by the Player timely and without delay is the key component of* [the agreement]*. Subject to the conditions of the checks are still at the possession of the Player and submitted to the bank duly, in case* [the club] *has insufficient funds in its bank account at the payment date of the bank cheques which causes the Player not to collect any of the instalments, the Player shall have the right to notify* [the club] *in writing (…) and request the payment of the overdue installments within 7 days. In case* [the club] *fails to pay the Player the overdue installments within the deadline of 7 days,* [the club] *agrees and accepts that the monetary conditions of* [the agreement] *will immediately become null and void without any requirement for another notice and the Player's guaranteed salary from* [the club] *(…) under the contract will be due and payable (…) immediately. In such case,* [the club] *irrevocably agrees and accepts to immediately pay the Player (…) his guaranteed salary (…) under* [the contract] *in the total amount of net 2.400.000 EUR after deducting the payments that is already paid to the Player according to* [the agreement]*, if any".*

14. In this context, the DRC took particular note of the fact that, following several default notices, on 1 August 2018 and 19 September 2018, the player sent a notice to the club deeming that the financial conditions of the agreement had not been fulfilled and, as a consequence, the player put the club in default of payment in the amount of EUR 2,000,000, as provided by the agreement.

15. After having taken note of the above, the DRC also took note of the position of the parties in the present matter. In this respect, the Claimant argued that, despite his various attempts, the club failed to pay the agreed sums as per the payment schedule of the termination agreement. As a consequence, the members of the Chamber observed that the player argued that he had no other choice than to apply the clause of the agreement according to which the total amount of EUR 2,400,000 was immediately payable by the club, deducting the amount already paid amounting to EUR 400,000.

16. Subsequently, the members of the Chamber took into account that the Respondent, for its part, did not provide any further comments as to the substance despite having been explicitly invited to do so.

17. In view of all the above and, in particular, taking into account the content of clause 2.4 of the termination agreement, the DRC decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the amount of EUR 2,000,000.

18. In addition, taking into account the Claimant's request, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the aforementioned amount as of 2 August 2018 until the date of effective payment.

19. Furthermore, taking into account the consideration under number II./9. above, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

20. In this regard, the Chamber pointed out that, against clubs, the consequence of the failure to pay the relevant amount in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

21. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amount due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.

22. Finally, the Chamber recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Samir Nasri, is admissible.

2. The claim of the Claimant is accepted.

3. The Respondent, Antalyaspor, has to pay to the Claimant outstanding remuneration in the amount of EUR 2,000,000, plus interest at the rate of 5% *p.a.* as from 2 August 2018 until the date of effective payment.

4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point 3. above.

5. The Respondent shall provide evidence of payment of the due amount in accordance with point 3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount due plus interest in accordance with point 3. above is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount plus interest is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amount plus interest is paid.

8. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

*****

Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note related to the appeal procedure:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

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

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer