CAS 2017/A/5105 World Anti-Doping Agency (WADA) v. National Anti-Doping Organisation – Sri Lanka (SLADA) & Shalika Dias

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Markus Manninen, Attorney-at-Law in Helsinki, Finland

in the arbitration between

WORLD ANTI-DOPING AGENCY (WADA), Montreal, Canada
Represented by Mr Ross Wenzel and Mr Nicolas Zbinden of Kellerhals Carrard in Lausanne, Switzerland

Appellant

and

NATIONAL ANTI-DOPING ORGANISATION – SRI LANKA (SLADA), Colombo, Sri Lanka

First Respondent

and

SHALIKA DIAS, Meerigama, Sri Lanka
Represented by Mr Vishwa de Livera Tennekoon, Attorney-at-Law in Colombo, Sri Lanka

Second Respondent

I. THE PARTIES

1. The World Anti-Doping Agency (*"WADA"* or the *"Appellant"*) is the independent international anti-doping agency, constituted as a private law foundation under Swiss law with its seat in Lausanne, Switzerland, and headquarters in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.

2. National Anti-Doping Organisation – Sri Lanka (*"SLADA"* or the *"First Respondent"*) was established by the Convention against Doping in Sport Act, No. 33 of 2013 with the objective of acting as the independent National Anti-Doping Organization for Sri Lanka. SLADA has its registered seat and headquarters in Colombo, Sri Lanka.

3. Ms Shalika Dias (the *"Athlete"* or the *"Second Respondent"*, together with the First Respondent, the *"Respondents"*), born in 1980, is an athlete from Sri Lanka.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 10 May 2015, the Athlete underwent an in-competition doping control in Diyagama, Sri Lanka. The analysis of the A Sample revealed the presence of metenolone and its metabolite, and of epitrenbolone, a metabolite of trenbolone. Metenolone and trenbolone are Exogenous Anabolic Androgenic Steroids prohibited under S1.1.a of the 2015 Prohibited List. The Athlete waived her right to the analysis of the B Sample.

6. On 22 June 2015, the Disciplinary Committee of SLADA rendered the first decision, imposing a four-year ineligibility period on the Athlete. The Athlete appealed against the Disciplinary Committee's decision to the Appeal Panel of SLADA.

7. On 6 February 2017, the Appeal Panel of SLADA rendered a decision (the "*Appealed Decision*"), reduced the initial sanction, and imposed an ineligibility period of 18 months in application of Article 10.5.1.2 (titled *"Contaminated Products"*) of the Anti-Doping Rules for Sri Lanka Anti-Doping Agency (the *"SLADA ADR"*).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

8. On 24 April 2017, WADA filed a Statement of Appeal with the CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (2017 edition) (the *"CAS Code"*). WADA requested the matter to be submitted to a sole arbitrator. The Statement of Appeal contained a brief statement of facts and a request for relief.

9. On 27 April 2017, the CAS Court Office initiated the present arbitration and specified that it had been assigned to the CAS Appeals Arbitration Division and shall therefore be dealt with in accordance with Articles R47 et seq. of the CAS Code. The Appellant was invited to file with the CAS a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and other evidence upon which it intends to rely. Finally, the Respondents were invited to inform the CAS Court Office whether they agreed to the appointment of a sole arbitrator as requested by the Appellant.

10. On 24 May 2017, the CAS Court Office informed the Parties that the Respondents did not object to the case being referred to a sole arbitrator.

11. On 2 June 2017, the Appellant filed its Appeal Brief with the CAS.

12. On 8 June 2017, the CAS Court Office invited the Respondents to submit to the CAS an Answer containing a statement of defence, any defence of lack of jurisdiction, any exhibits or specification of other evidence upon which the Respondents intend to rely, as well as the names of any witnesses and experts whom they intend to call. The CAS Court Office advised that if the Respondents failed to submit an Answer by the given time limit, the Panel or the Sole Arbitrator could nevertheless proceed with the arbitration and deliver an award.

13. On 15 June 2017, the CAS Court Office informed the Parties that pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the case to a sole arbitrator and had appointed Mr Markus Manninen (the *"Sole Arbitrator"*). The Parties did not raise any objection as to the constitution and composition of the panel.

14. On 19 June 2017, the Second Respondent, through her counsel, informed the CAS Court Office that she did not have the capacity to pay the first advance of costs and that in any event she did not have the financial means to continue the arbitration. Furthermore, the Second Respondent requested the CAS Court Office to advise on how to proceed with the case. On the same day, the CAS Court Office acknowledged receipt of the Second Respondent's e-mail and advised the Parties that more information would follow in due course.

15. On 27 June 2017, the CAS Court Office informed the Parties that the Appellant had paid its share and the Second Respondent's share of the advance of costs and that the case file was being transferred to the Sole Arbitrator.

16. On 29 June 2017, the counsel for the Second Respondent confirmed that he had received the Statement of Appeal on 12 June 2017 and requested an extension of five days in order to *"adequately defend [his] client"*. The extension was granted on the same day.

17. On 6 July 2017, the counsel for the Second Respondent requested *"the maximum extension possible under the rules"* in order to obtain documents.

18. On 12 July 2017, the CAS Court Office informed the Parties that the extension had been granted and the Second Respondent was invited to submit her Answer on or before 19 July 2017.

19. On 23 July 2017, the counsel for the Second Respondent informed the CAS Court Office that he had advised the Second Respondent that the appeal was deemed withdrawn because the Appellant had not paid the First Respondent's share of the advance of costs before the due date.

20. On 7 August 2017, the CAS Court Office sent a letter to the Parties noting that the Second Respondent had been granted an extension until 19 July 2017 to file her Answer but the CAS Court Office had not received such a submission. The Parties were invited to inform the CAS Court Office whether they preferred that a hearing be held in this matter. Finally, the CAS Court Office advised the Second Respondent that the Appellant had paid both Respondents' shares of the advance of costs.

21. On 14 August 2017, the Appellant notified that it would prefer the matter to be decided on the basis of the written record. On the same day, the Second Respondent presented that the current matter is *res judicata* and that the CAS had no jurisdiction to adjudicate the matter. In addition, the Second Respondent required proof of payment of advance of costs by the Appellant on or before 21 July 2017, failing which the Appeal would be deemed withdrawn. Moreover, the Second Respondent noted that the matter was *ipso jure* terminated. With regard to the hearing, the Second Respondent stated that *"it would be unfair and unjust to continue without an answer or hearing from the 2nd Respondent"*. However, the Second Respondent failed to justify why a hearing would be needed. Indeed, the Second Respondent did not identify any witnesses, experts, or arguments that should be examined in the hearing.

22. On 16 August 2017, the CAS Court Office confirmed to the Parties that the Appellant had paid the entire share of the advance of costs within the stipulated deadlines.

23. On 18 August 2017, the counsel for the Second Respondent enquired whether he could expect a determination on jurisdiction, whether the Second Respondent would be entitled to file an Answer, and when the hearing would be arranged.

24. On 23 August 2017, the CAS Court Office invited the Appellant and the First Respondent to comment on the Second Respondent's arguments concerning the jurisdiction and other procedural matters.

25. On 28 August 2017, the Appellant replied to the Second Respondent's procedural arguments. The Appellant noted that it had paid the advance of costs within the prescribed deadlines. Furthermore, the Appellant presented that it had the right to appeal to CAS against second instance national decisions. Finally, the Appellant noted that the Second Respondent had had an ample opportunity to file an Answer but had failed to do so.

26. On 19 September 2017, the CAS Court Office sent an Order of Procedure to the Parties. As noted in the Order of Procedure, pursuant to Article R57 of the CAS Code, the Sole Arbitrator considers himself sufficiently well-informed to decide the matter without the need to hold a hearing. The Appellant's counsel signed and returned the Order of Procedure to the CAS Court Office on 21 September 2017. Both Respondents failed to return a duly signed copy of the Order of Procedure.

27. On 26 September 2017, the Second Respondent sent an e-mail to the CAS Court Office and reiterated that the proceedings should be deemed terminated.

28. On 28 September 2017, the CAS Court Office informed the Parties that the Second Respondent's e-mail of 26 September 2017 was duly considered, and repeated that the Sole Arbitrator will proceed to the rendering of the arbitral award.

IV. SUBMISSIONS OF THE PARTIES

29. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in its deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

30. WADA submits, in essence, the following:

- Pursuant to Article 2.1 of the SLADA ADR, the presence of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an anti-doping rule violation (*"ADRV"*). Sufficient proof of an ADRV under Article 2.1 of the SLADA ADR is established by the *"presence of a Prohibited Substance or its Metabolites or Markers*

in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed."

- The analysis of the Athlete's A Sample revealed the presence of metenolone and its metabolite, and epitrenbolone, a metabolite of trenbolone. Metenolone and trenbolone are Exegenous Anabolic Androgenic Steroids prohibited under S1.1.a of the 2015 Prohibited List.

- As the Athlete has waived her right to the analysis of the B Sample and the B Sample has not been analysed, the Athlete has breached Article 2.1 of the SLADA ADR.

- According to Article 10.2.1.1 of the SLADA ADR, the period of ineligibility shall be four years where the ADRV does not involve a specified substance, unless the athlete can establish, on the balance of probability, that the ADRV had not been intentional.

- As the athlete bears the burden of establishing that the violation had not been intentional, a whole series of CAS cases have held that it follows that he/she must establish how the substance had entered his/her body. Only in extremely rare cases, an athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. However, there are no exceptional circumstances in this case which show to the relevant standard of proof that the violation had not been intentional (without the Athlete having to establish the origin of the prohibited substance).

- With respect to establishing the origin of the prohibited substance, it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered his/her body inadvertently from some supplement, medicine, or other product. An athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that he/she had taken had in fact contained the substance in question.

- To explain the origin of the prohibited substances, the Athlete provided four different supplements that she had allegedly used: (1) *"Anabolic Peak"*, (2) *"Phase-8"*, (3) *"Hemo-Rage Black"*, and (4) *"Assault"*. She admitted before the national body that the Institute of Sports Medicine had not approved or recommended the supplements she had been taking, which would have been a normal procedure in Sri Lanka. Moreover, she had not disclosed to her coach that she was taking these supplements. She also indicated that she had obtained small amounts of various supplements from athletes in the national pool in polythene bags and transferred them into plastic bottles.

- WADA puts forth that the Athlete's allegations are unsubstantiated. She had not mentioned any of the four supplements on the doping control form. There is no evidence that she had used these supplements. She had even clarified before the Appeal Panel that she did not have records of data and information of the supplements she had taken

and that she had not written them down anywhere. Moreover, the Athlete had not mentioned these four supplements when she had been confronted with the ADRV. She mentioned the supplements for the first time in the hearing before the Disciplinary Committee of SLADA.

- Even assuming that she had taken these supplements, it appears that she had not taken them around the time of the positive doping control. She indicated before the Appeal Panel of SLADA that she had used Anabolic Peak in 2014, not in 2015 when the positive doping control had taken place. Furthermore, all four supplements had been tested and none of them had been found to contain metenolone or trenbolone. One of the supplements, Anabolic Peak, was found to contain mestanolone and oxymetholone, which are two different exogenous anabolic steroids. Therefore, the explanation that the four supplements had caused the positive finding is erroneous.

- With regard to the Athlete's argument that she had not disclosed the supplements because she had not used them within the seven-day period prior to the doping control, WADA submits that if the Athlete had used a contaminated supplement outside the seven-day disclosure period, it would be unlikely that such an intake could have resulted in the concentrations found in the Athlete's urine. The concentrations of the prohibited substances found in the Athlete's body are compatible with a normal dose taken close to the doping control.

- The Athlete has failed to satisfy the burden of proving how the substances had entered her body. The ADRV must therefore be deemed intentional and the Athlete be sanctioned with a four-year ineligibility period.

- Even assuming that the Athlete had indeed established that one of the supplements that she had taken had been contaminated with trenbolone and metenolone, the violation would still be at least indirectly intentional. She had taken supplements without informing the doctors or her coach and without disclosing them on the doping control form. She had allegedly received the supplements from other athletes in polythene bags without any packaging. She had known that she should only take supplements recommended by a doctor. Finally, she had known that by taking the supplements she could commit an ADRV. The Athlete had been aware of the risk that her conduct could lead to an ADRV and manifestly disregarded this risk.

- With regard to Article 10.5.1.2 of the SLADA ADR (Contaminated Products), in order to benefit from it, an athlete must first demonstrate that he/she bore No Significant Fault or Negligence, which required that the origin of the prohibited substance be established. The Athlete had failed to establish the origin of metenolone and trenbolone. Therefore, Article 10.5.1.2 is inapplicable. Furthermore, the Athlete admitted that she had taken supplements that she had received from other athletes from a polythene bag without any packaging or reference to what the product contained. The supplements had not been

approved by a doctor and she had not disclosed the taking of the supplements to her coach or on the doping control form. It follows that the Athlete cannot benefit from the provisions of No Significant Fault or Negligence.

31. In light of the above, WADA submits the following prayers for relief in the Appeal Brief:

"1. The Appeal of WADA is admissible.

2. The decision rendered by the Appeal Panel of SLADA on 6 February 2017 in the matter of Shalika Dias is set aside.

3. Shalika Dias is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Shalika Dias before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Shalika Dias from and including 10 May 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

5. The arbitration costs shall be borne by SLADA or, in the alternative, by the Respondents jointly and severally.

6. The Respondents be ordered to pay WADA a significant contribution to its legal and other costs in connection with these appeal proceedings."

32. Although duly invited, neither of the Respondents filed an Answer to WADA's Appeal Brief within the prescribed time limit or thereafter. Pursuant to Article R55 of the CAS Code, the Sole Arbitrator can proceed to make an award in relation to WADA's claims.

33. The Sole Arbitrator underlines that the Parties do not have a subjective right to a hearing. The CAS panel adjudicating the matter has the power to decide whether a hearing is necessary. Considering that the Respondents did not file an Answer and, in addition, that they failed to justify why a hearing would be necessary, the Sole Arbitrator deemed himself sufficiently informed to render an award without a hearing.

34. Despite the lack of any formal Answer from the Respondents, the legal analysis below will take into account all available relevant information, and is not restricted to the submissions of WADA.

V. JURISDICTION

35. WADA maintains that the jurisdiction of the CAS derives from Articles 13.2.2 and 13.2.3 of the SLADA ADR effective from 1 January 2015. SLADA has not challenged the jurisdiction of the CAS but the Athlete has. She has noted the following: *"The current matter is res judicata and as such the Court of Arbitration for sport* (sic) *has no jurisdiction to look into this matter."* The Athlete has not elaborated her argument further.

36. WADA has replied that it is at the essence of the World Anti-Doping Code that WADA has the right to appeal to CAS against second instance national decisions and that this right is reflected in Articles 13.2.2 and 13.2.3 of the SLADA ADR.

37. The Sole Arbitrator notes that the doctrine of *res judicata* refers to a case in which a final judgment has been rendered and which no longer is subject to appeal. It follows that if the Appealed Decision is appealable pursuant to the applicable provisions, the CAS has the jurisdiction to hear and adjudicate the matter.

38. Paragraph 1 of Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."*

39. The Sole Arbitrator observes that the relevant parts of Articles 13.2.2 and 13.2.3 of the SLADA ADR provide as follows:

> *"13.2.2.3 Decisions of the National Anti-Doping Appeal Panel (...)*
> *13.2.2.3.3 The decision may be appealed as provided in Article 13.2.3 (...)*
> *13.2.3 (...) In cases under Article 13.2.2, the following parties, at a minimum, shall have the right to appeal: (...) (f) WADA.*
> *For cases under Article 13.2.2, WADA (...) shall also have the right to appeal to CAS with respect to the decision of the national-level appeal body."*

40. The Sole Arbitrator finds that Articles 13.2.2 and 13.2.3 of the SLADA ADR contain clear provisions according to which WADA has the right to appeal against the decisions of the SLADA Appeal Panel to CAS. Therefore, the doctrine of *res judicata* invoked by the Athlete is not applicable in the present case and CAS has jurisdiction to adjudicate and decide the present matter.

41. The present case shall be dealt with in accordance with the Appeals Arbitration rules. Under Article R57 of the CAS Code and in line with the consistent jurisprudence of the

CAS, the Sole Arbitrator has full power to review the facts and the law. The Sole Arbitrator therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

VI. ADMISSIBILITY

42. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."*

43. Article 13.7.1 of the SLADA ADR provides that *"[t]he filing deadline for an appeal filed by WADA shall be the later of: (a) Twenty-one days after the last day on which any other party in the case could have appealed; or (b) Twenty-one days after WADA's receipt of the complete file relating to the decision".*

44. The Appeal Panel of SLADA issued the Appealed Decision on 6 February 2017. The Appellant received part of the case file relating to the Appealed Decision on 3 April 2017. The Appellant filed its Statement of Appeal on 24 April 2017, i.e. before the expiry of the 21-day time limit.

45. The Appeal Brief was sent to the CAS Court Office on 2 June 2017 and was therefore submitted within the deadline set by the CAS Court Office, namely 3 June 2017.

46. The Sole Arbitrator concludes that the Appellant has adhered to the applicable time limits.

47. Notwithstanding the above, the Athlete has put forth that the appeal is inadmissible. In the Athlete's view, the appeal by WADA shall be deemed withdrawn and the matter *ipso jure* terminated because WADA did not pay the advance of costs on behalf of the First Respondent within the prescribed time limit. The Athlete has submitted the following: *"(...) the arbitration cannot proceed where the arbitration cost has not been paid in full, as such if the balance advance of arbitration costs were not received by CAS on 21.07.2017 as per letter dated 07.07.2017 this Appeal is currently non-existent (...)"*

48. The Athlete further notes that *"(...) the Fiance* (sic) *Director confirms that the 1st Respondent has failed to pay its share of the costs before the 30th June 2017 the the* (sic) *provisions of R64.2 of the Code of Sports Related Arbitration will apply and the said*

provisions state that 'If a party fails to pay its share another may substitute for it; in case of non-payment of the entire advance of costs within the time limit fixed by the CAS the request/Appeal shall be deemed withdrawn and the CAS shall terminate the arbitration'. Therefore ipso jure this matter is terminated."

49. In the Sole Arbitrator's interpretation, the Athlete's argumentation regarding the non-payment of the advance of costs is three-fold: First, a failure to settle the advance of costs within the set time limit automatically leads to the termination of the arbitral proceedings. Second, in the absence of relevant proof, the Appellant shall be deemed not to have paid the entire amount of advance of costs. Third, Article R64.2 of the CAS Code requires that all shares of advance of costs should have been paid before the original due date of the advance of costs, i.e. 30 June 2017.

50. The Sole Arbitrator does not concur with the Athlete. First, it has been held in the CAS case law (e.g. CAS 2010/A/2144 paragraph 20 and CAS 2010/A/2170 & 2171 paragraph 3) that the management of the advance of costs is an administrative issue dealt with by the CAS Court Office. The non-payment of the advance of costs within said deadline cannot be invoked by a party in order to request that an appeal be automatically considered inadmissible. The deadlines fixed for the payment of the advance of costs only allow the CAS Court Office to terminate a procedure in the absence of payment, in accordance with Article R64.2 of the CAS Code.

51. The Sole Arbitrator notes that the CAS Court Office has confirmed that the full amount of the advance of costs had been paid within the relevant time limit and therefore had no reason to terminate the procedure. Thus, the Sole Arbitrator rejects the Athlete's view that the case is *"non-existent"* and *ipso jure* terminated. In the light of the above statement, there is no reason to address the money transfers in detail. In this regard, the Sole Arbitrator notes the CAS Court Office's letters of 7 August 2017 and 16 August 2017 in which the CAS Court Office has confirmed that WADA has paid both Respondents' shares of the advance of costs and that the payments have been made within the prescribed deadlines.

52. Based on the above, the Sole Arbitrator deems the claims admissible.

VII. APPLICABLE LAW

53. WADA submits that the SLADA ADR are applicable rules in this matter. SLADA or the Athlete did not put forward any specific position in respect of the applicable law.

54. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-

related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

55. This provision is in line with Article 187, paragraph 1 of the Swiss Private International Law Act (PILA), which in its English translation states as follows: *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected."*

56. Pursuant to Article 1.3.2 of the SLADA ADR, the rules apply to the Athlete as a national of Sri Lanka. In addition, SLADA, the sports-related body who issued the Appealed Decision within the meaning of Article R58 of the CAS Code, is domiciled in Sri Lanka. Accordingly, the Sole Arbitrator shall decide this dispute in accordance with the SLADA ADR and, to the extent necessary, Sri Lankan law.

VIII. MERITS

57. Considering all Parties' submissions, the main issues to be resolved by the Sole Arbitrator are the following:

A. Did the Athlete violate Article 2.1 of the SLADA ADR?

B. If the first question is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an ADRV?

58. The Sole Arbitrator observes that the following general regulatory framework is relevant as to the merits of the case at hand.

59. The relevant parts of Article 2 of the SLADA ADR read as follows:

"ARTICLE 2 DEFINITION OF DOPING – ANTI-DOPING RULE VIOLATIONS

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of these Anti-Doping Rules.

(...)

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed (...)"

60. Article 3.1 of the SLADA ADR reads as follows:

"3.1 Burdens and Standards of Proof

SLADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SLADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. (...)"

61. The Sole Arbitrator observes that, in its attempt to establish the ADRV of the Athlete under Article 2.1 of the SLADA ADR, WADA relies firstly on the adverse analytical finding in the Athlete's A Sample taken on 10 May 2015. Secondly, WADA relies on the fact that the Athlete has waived her right to the analysis of the B Sample and, thirdly, on the fact that the B Sample was not analysed.

62. The Sole Arbitrator notes that pursuant to Article 2.1.2 of the SLADA ADR, the presence of metenolone, its metabolite and epitrenbolone, a metabolite of trenbolone, in the Athlete's A Sample shall be deemed sufficient proof of an ADRV in the circumstances of the case: the Athlete waived her right to B Sample analysis and the B Sample was not analysed. Consequently, the Sole Arbitrator finds that the Athlete has violated Article 2.1 of the SLADA ADR and thus committed an ADRV. This finding is consistent with the findings of the Disciplinary Committee and the Appeal Panel of the SLADA.

B. If an ADRV Has Been Committed, What Is the Sanction?

a. Duration of the Ineligibility Period

63. Article 10.2 of the SLADA ADR reads, in the relevant parts, as follows:

> *"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*
>
> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. (...)*
>
> *10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*
>
> *10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk."*

64. As stipulated in Article 10.2 of the SLADA ADR, the basic duration of the ineligibility period is four years when the ADRV is based on non-specified substances such as metenolone and trenbolone, whose metabolites were found to be present in the Athlete's A Sample. However, if an athlete is able to prove by a balance of probability that the ADRV was not intentional, the period of ineligibility shall be two years, subject to potential reduction or suspension.

65. SLADA or the Athlete have not filed with the CAS any submissions with regard to the length of the ban or any other consequence for an ADRV governed by the SLADA ADR.

In particular, the Athlete has not submitted to the CAS that the period of ineligibility should be mitigated for some reason.

66. However, the Athlete has presented before the national anti-doping panels that the ADRV was not intentional. The Athlete's key defence is a suspicion that some of the several nutritional supplements that she had consumed were contaminated. The Athlete provided four of them to the Disciplinary Committee of the SLADA for further analysis.

67. The Sole Arbitrator notes that pursuant to established CAS case law, apart from extremely rare cases (see CAS 2016/A/4534, CAS 2016/A/4676 and CAS 2016/A/4919), an athlete must establish how the prohibited substance entered their system in order to discharge the burden of establishing the lack of intention (e.g. CAS 2016/A/4377, paragraph 51). To establish the origin of the prohibited substance, it is not sufficient for an athlete to merely protest their innocence and suggest that the substance must have entered their body inadvertently from a supplement, medicine, or other product. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that the athlete has taken has contained the substance in question. For example, details about the date of intake, the location and route of intake, or any other details about the ingestion are necessary.

68. In CAS 2010/A/2230, the Sole Arbitrator expressed the athlete's burden as follows:

> *"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature for the athlete's basic personal duty to ensure that no prohibited substances enter his body."*

69. To explain the origin of the prohibited substances found in her body, the Athlete has presented that she had used four different supplements, which may have been contaminated and thus caused her adverse analytical finding: (1) *"Anabolic Peak"*, (2) *"Phase-8"*, (3) *"Hemo-Rage Black"*, and (4) *"Assault"*. The Sole Arbitrator is not persuaded by the Athlete's explanation for various reasons.

70. First, the Athlete did not disclose the intake of these supplements in her doping control form. Instead, she declared having ingested three different products, i.e. (1) *"No Explode"*, (2) *"celltech"*, and (3) *"vitamin"* within the seven days preceding the doping test. In the absence of any evidence, apart from the Athlete's announcement, showing that she had indeed taken the four supplements that she had reported, the use has remained unsubstantiated.

71. The Sole Arbitrator notes that the reliability of the Athlete's declaration on having ingested *"Anabolic Peak"*, *"Phase-8"*, *"Hemo-Rage Black"*, and *"Assault"* is attenuated by her own statement in front of the SLADA Appeal Panel, according to which she does not have *"records of data and information of the supplements [she] took"*. The Athlete also admitted that she had not written them down anywhere. Finally, according to the Athlete, she had received and taken *"Anabolic Peak"* in 2014. Considering that the positive sample was collected on 10 May 2015, the Athlete has not shown that *"Anabolic Peak"* would have caused the adverse analytical finding.

72. Second, and more importantly, the National Dangerous Drugs Control Board, National Narcotics Laboratory tested the four supplements and discovered that they did not contain metenolone or trenbolone. Thus, there is no evidence that the supplements allegedly used by the Athlete would have been contaminated by the relevant substances.

73. Third, according to Ms Irene Mazzoni, WADA Senior Manager, Research & Prohibited List, the estimated concentrations of epitrenbolone (metabolite of trenbolone), metenolone and its metabolite *"are compatible with a normal dose taken close to doping control"*. The Sole Arbitrator has no reason to question the correctness of Ms Mazzoni's statement, which further supports the finding that the route of ingestion has not been the nutritional supplements reported by the Athlete.

74. For the above reasons, the Sole Arbitrator finds that the Athlete has not established the source of the prohibited substances found in her system. Taking also into consideration that the Athlete's story about the supplements she had allegedly taken does not match with the rest of the evidence, the current matter is not one of the extremely rare cases in which a finding of no intent can be made without proof of the origin of the substances.

75. In conclusion, the Athlete has not met her burden of proof with regard to the non-intentional ADRV. It follows that the ADRV must be deemed intentional. The Athlete shall, therefore, be sanctioned with a four-year period of ineligibility under the SLADA ADR.

b. Commencement of the Ineligibility Period and Credit for Period of Ineligibility Served

76. With respect to the sanction start date, WADA has requested that the ineligibility period commence on the date on which the CAS award enters into force. The Respondents have not addressed the matter during the CAS proceedings.

77. The Sole Arbitrator is guided by Article 10.11 of the SLADA ADR, titled *"Commencement of Ineligibility Period"*, which stipulates as follows:

> *"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived, or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."*

78. According to the comment to Article 10.11 of the SLADA ADR, the rule makes clear that delays not attributable to the athlete, timely admission by the athlete, and provisional suspension are the only justifications for starting the period of ineligibility earlier than the date of the final hearing decision.

79. The Sole Arbitrator notes that none of the three exceptions is applicable in this case. There is no evidence or even an argument that the hearing process would have been substantially delayed, the Athlete has not invoked the timely admission rule and, as explained below, the Athlete has already served a period of ineligibility – not only a provisional suspension. It follows that the period of ineligibility shall start on the date of this award.

80. The ban served by the Athlete shall be credited to the Athlete. This is stipulated in the second sentence of Article 10.11.3.1 of the SLADA ADR as follows:

> *"If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal."*

81. The Sole Arbitrator takes note that, according to the decisions by the Disciplinary Panel and the Appeal Panel of the SLADA, the Athlete has been suspended from 3 June 2015 to 6 February 2017, i.e. for roughly one year, eight months, and three days. Consequently, the Sole Arbitrator determines that the Athlete's four-year period of ineligibility shall be reduced accordingly.

c. Disqualification of Results

82. WADA has requested that all competitive results obtained by the Athlete from and including 10 May 2015, i.e. the date of the positive sample, be disqualified. WADA has not elaborated its request further. The Respondents have not addressed the issue in the CAS proceedings.

83. Article 10.8 of the SLADA ADR reads as follows:

> *"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."*

84. The Sole Arbitrator observes that the Athlete has been eligible to compete in two different periods after the date of the positive sample: first from 10 May 2015 to the imposition of the provisional suspension on 3 June 2015 and, second, from the date of the Appealed Decision on 6 February 2017 onwards. There are two pertinent issues to be resolved by the Sole Arbitrator: First, does the wording of Article 10.8 of the SLADA ADR as such preclude the Sole Arbitrator from disqualifying the Athlete's results, considering that she has served an ineligibility period? Second, if the answer to the first question is in the negative, does fairness require that the Athlete's results from 6 February 2017 onwards remain untouched?

85. In general, CAS Panels have confirmed that the equivalents to Article 10.8 of the SLADA ADR allow the disqualification of results from the period between the expiry of the ineligibility period and the imposition of an additional ban (e.g. CAS 2008/A/1470). Results may remain valid if fairness so requires in the circumstances of each case (e.g. and TAS 2009/A/2014). The factors to be assessed in the fairness test include, but are not restricted to, the athlete's intent and degree of fault, as well as the length of the disqualification period.

86. As noted above, the Athlete has failed to establish by a balance of probability that the ADRV was not intentional. Considering also that the period from which the results should be disqualified is not particularly long, and that there is no evidence (or even an argument) that the disqualification of results would cause significant harm to the Athlete, the Sole Arbitrator does not find fairness to require a deviation from the main rule of Article 10.8 of the SLADA ADR. In the circumstances of the case, the mere fact that the Appeal Panel of SLADA had erroneously found that the Athlete's ADRV may be considered non-intentional and that the degree of her fault was reduced, does not warrant the preservation of the Athlete's results.

87. Based on the above and considering, in particular, that SLADA or the Athlete have not submitted any claims or arguments with respect to the disqualification of results, the Sole Arbitrator considers it justified to disqualify all of the Athlete's results obtained from and including 10 May 2015.

IX. COSTS

88. Article R64.4 of the CAS Code provides:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
> *- the CAS Court Office fee,*
> *- the administrative costs of the CAS calculated in accordance with the CAS scale,*
> *- the costs and fees of the arbitrators,*
> *- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*

- a contribution towards the expenses of the CAS, and
- the costs of witnesses, experts and interpreters.
The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

89. Article R64.5 of the CAS Code provides:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

90. Pursuant to Article R64.5 of the CAS Code, in making his determination with respect to granting a contribution towards the legal fees and other expenses of the prevailing party, the Sole Arbitrator has to consider the complexity and outcome of the arbitration as well as the conduct and the financial resources of the Parties.

91. In this respect, the Sole Arbitrator notes that WADA's claim has been accepted in full. As a result, by any standard, WADA is the prevailing party. The Sole Arbitrator was presented with an incorrect analysis of the sanction in the second instance decision by SLADA, which WADA had to appeal.

92. The Athlete's position in this appeal was occasioned by the decision of the Appeal Panel of the SLADA; had the tribunal correctly applied the applicable rules, the Athlete would have been faced with a decision whether to appeal, but that decision would have been hers alone. In this case, as a result of WADA's appeal, she had little choice but to endeavour to defend her position. With respect to the financial resources of the Parties, WADA and SLADA obviously have more means than the Athlete, who stopped working because of her positive test and had been on low income even before that.

93. In light of the relevant elements, the Sole Arbitrator finds it reasonable that SLADA shall bear the costs of this arbitration. In addition, the Sole Arbitrator grants a contribution toward WADA's legal fees and expenses in the amount of CHF 3,000 (three thousand Swiss Francs), to be paid by SLADA. In addition, SLADA and the Athlete shall bear their own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS has jurisdiction to hear this dispute and the claims submitted to it are admissible.

2. The appeal filed by the World Anti-Doping Agency on 24 April 2017 against the National Anti-Doping Organisation – Sri Lanka and Ms Shalika Dias is upheld.

3. The decision rendered by the Appeal Panel of SLADA on 6 February 2017 is set aside.

4. Ms Shalika Dias is sanctioned with a four-year (4) period of ineligibility, starting as of the date of this award, with credit given for the ineligibility period already served by the Athlete (i.e. from 3 June 2015 to 6 February 2017).

5. All competitive results of Ms Shalika Dias from and including 10 May 2015 to the date of this award are disqualified, with all resulting consequences (including forfeiture of medals, points, and prizes).

6. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne in their entirety by the National Anti-Doping Organisation – Sri Lanka.

7. The National Anti-Doping Organisation – Sri Lanka is ordered to pay CHF 3,000.00 (three thousand Swiss Francs) to the World Anti-Doping Agency as a contribution towards its legal fees and expenses. The National Anti-Doping Organisation – Sri Lanka and Ms Shalika Dias shall bear their own legal fees and expenses.

8. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 20 November 2017

THE COURT OF ARBITRATION FOR SPORT

Markus Manninen
Sole Arbitrator