CAS 2021/A/8458 World Anti-Doping Agency (WADA) v. Indian National Anti-Doping Agency (NADA) & Rani Rana

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Peter Grilc, Professor in Ljubljana, Slovenia

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Mr Nicholas Zbinden and Mr Anton Sotir, Attorneys-at-Law, Kellerhals-Carrard, Lausanne, Switzerland

- Appellant -

and

Indian National Anti-Doping Agency (NADA), New Delhi, India

Represented by Mr Yasir Arafat, Counsel, New Delhi, India

- First Respondent -

and

Ms Rani Rana, Village Jakhara, District Gwalior, Madhya Pradesh, India

Represented by Mr Parth Goswami, Ms Daisy Roy, and Mr Akshay Kumar, Attorneys-at-Law of Chambers of Advocate Parth Goswami, New Delhi, India

- Second Respondent -

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I. THE PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is the international anti-doping agency, constituted as a private law foundation under Swiss law. WADA has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The Indian National Anti-Doping Agency ("NADA" or the "First Respondent") is the Indian national anti-doping agency, set up as registered society under the Indian Societies Registration Act of 1860. NADA has its registered seat in New Delhi, India.

3. Ms Rani Rana (the "Athlete" or the "Second Respondent") is an international-level Indian wrestler.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written and oral submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. This section serves solely for the purpose of factual synopsis. To the extent they are necessary or relevant, additional facts may be set out below in the analysis of the Merits. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

i. Nature of the case

5. On 28 December 2019, Ms Rani Rana underwent an out-of-competition doping control test by the NADA DCO during her stay in Lucknow, India where she was attending the National Training Camp for the sport of Wrestling.

6. The Athlete's Sample was split into two separate bottles (Samples A and B). Sample A was tested at the Anti-Doping ("AD") Lab in Doha, Qatar and was returned with an Adverse Analytical Finding ("AAF") for Drostanolone Metabolite 2a-methyl-5a-Androstan-3a-ol17-One), Anabolic Androgene Steroid ("AAS"), which is listed under S1 WADA 2019 Prohibited Lists as anabolic androgenic steroid, being a non-specified substance and which is prohibited at all times.

7. On 12 February 2020, NADA notified the Athlete of the positive finding and provisionally suspended her.

8. On 5 October 2021, the Anti-Doping Disciplinary Panel of the NADA (the "ADDP" or the "NADA ADDDP") issued a decision (the "Appealed Decision") finding that the Athlete committed an anti-doping rule violation ("ADRV") and declared her ineligible

for a period of two years starting from 28 December 2019 (i.e. the date of the doping control). In addition, the results achieved by the Athlete from 28 December 2019 were disqualified with all respective consequences, including forfeiture of medals, points and prize money.

9. WADA appealed the Appealed Decision and requests that the Athlete be given a 4-year suspension for the ADRV.

10. The following is a chronological summary of the events as identified in the Appealed Decision, subject of course to possible modifications according to the Parties' submissions.

ii. The events prior to the 28 December 2019 out-of-competition test

11. According to the Athlete, she got a serious knee injury during a national competition due to which she discontinued her participation in the competition and returned home. After a resting period and healing the injury with natural remedies due to the worsening of the injury, she consulted a well-known certified doctor named Dr Girish Gupta from Indore, who is an expert of orthopedic treatment and was the best she could afford considering her financial situation.

12. On 10 December 2019, after the initial check-up, Dr Gupta prescribed the Athlete with medicine and an injection. The Athlete was treated with the injection of "Drostoprime" which was a result of the professional choice of Dr Gupta, and the Athlete was advised not to resume training for at least six months.

13. According to the Athlete, prior to administering the injection, she very clearly informed the doctor that she is an athlete and therefore is subject to sample collection by doping agencies.

14. After the treatment, the Athlete was asked by the Wrestling Federation of India to mandatorily join the Training Camp in Lucknow before 15 December 2019. After the arrival to the camp the Athlete (i) informed the authorities about her injury and (ii) visited the Sports Authority of India Doctors at the Camp who recorded their prescriptions and recommended an MRI. After the MRI, the Athlete was diagnosed with a career threatening injury, i.e. a PCL injury in her left knee. During this time while the Athlete was in the camp, she was tested on an out-of-competition basis on 28 December 2019.

B. Proceedings before the Anti-doping Disciplinary Panel of the NADA

15. On 12 February 2020, NADA issued a Notice of Charge for violation of Rule 2.1 of the NADA Anti-Doping Rules, accompanied by a mandatory provisional suspension, with effect from the very same date of notice (12 February 2020).

16. The Athlete filed a written submission accompanied with medical documents to explain how the substance entered her body.

17. The dispositif of the Appealed Decision reads as follows: *"The panel hold Ms. Rani Rana (… address omitted …) is liable for sanctions under Article 10.2.2 for ineligibility for period 2 (two) years. Normally, the period of ineligibility starts from the date of the decision. In the present case, there is delay on the part of NADA in reporting report of "A" Sample of the athlete thus, the period of athlete's ineligibility which is for the period of 2 years shall commence from the date of sample collection, i.e., 28.12.2019. We also direct that under Article 10.8 all other competitive results secured by the athlete from the date of sample collection i.e., 28.12.2019 shall be rendered forfeited and medals, points and prizes secured by the athlete shall also stand forfeited."*

18. On 22 October 2021, WADA filed a request with NADA in respect of the Appealed Decision and on 26 October 2021, received the case file from NADA.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 16 November 2021, WADA filed an appeal against the NADA and the Athlete challenging the Appealed Decision in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In the Statement of Appeal, the Appellant requested that the appeal be submitted to a Sole Arbitrator, a proposition that the other Parties did not express their opinion on.

20. On 6 December 2021, after having been granted an extension further to Article R32 of the CAS Code, the Appellant filed the Appeal Brief, accompanied with 21 exhibits, in accordance with Article R51 of the CAS Code.

21. On 9 December 2021, the Parties were informed that the Deputy Division President of the CAS Arbitration Division had decided to refer this dispute to a Sole Arbitrator further to Article R50 of the CAS Code.

22. On 30 December 2021, the CAS Court Office requested that the Respondents submit proof of having filed their respective Answer Briefs within the deadline of 28 December 2021, in light of the fact that the CAS Court Office had not received an Answer filed by either Respondent.

23. On 5 January 2022, the Second Respondent transmitted to the CAS Court Office by email only an Answer (titled the "Written Submission on behalf of the Athlete/Second Respondent Ms. Rani Rana to the Appeal filed by the Appellant/WADA dated 19.11.2021"), accompanied with 54 pages of documentation (understood to be exhibits).

24. On 12 January 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, had decided that the Sole Arbitrator appointed to decide the case was constituted as follows:

Sole Arbitrator: Dr Peter Grilc, Professor in Ljubljana, Slovenia

25. By the letter of 12 January 2022, the Appellant stated that it would not object to the admissibility of the Second Respondent's 5 January 2022 written submission despite the fact that it was not timely filed.

26. On 13 January 2022, the CAS Court Office noted that the First Respondent had not objected to the admissibility of the Second Respondent's 5 January written submission and that the 12 January 2022 deadline provided for it to do so had lapsed.

27. On 17 January 2022, the Second Respondent informed the CAS Court Office that the prescriptions along with the statement of Dr Gupta is already on record and that the Athlete is trying to get in touch with him to ascertain whether he would be able to make himself available as a witness; however, she has not been able to get a confirmation from him regarding his availability during the hearing of the matter.

28. On 18 January 2022, the Parties were informed that the Sole Arbitrator decided that the Second Respondent's 5 January 2022 written submission, which is understood to be her Answer, is admissible, in the absence of the other Parties' objections. The Appellant or the Second Respondent were also invited further to Article R44.3 of the CAS Code to provide by 25 January 2022 a copy of the "Dope Control Form" referred to by the Second Respondent on page 5 of her 5 January 2022 Answer.

29. Also on 18 January 2022, the Appellant provided a copy of the Second Respondent's Doping Control Form dated 28 December 2019, which was submitted as Exhibit 6 to the Appeal Brief, and which neither the First or Second Respondent objected to.

30. By letters of 24 January 2022, both Respondents informed the CAS Court Office they preferred the Award to be issued based on the Parties' written submissions without a hearing.

31. On 28 January 2022, the Appellant asked that a hearing be held and also requested that Dr Gupta be made available as a witness.

32. On 10 February 2022, the Parties were informed that, having considered the Parties' respective positions in this regard and in light of the circumstances of the case including the ongoing COVID-19 pandemic, the Sole Arbitrator had decided to hold a hearing via video-conference, further to Articles R44.2 and R57 of the CAS Code.

33. On 24 February 2022, the Appellant informed the CAS Court Office that it had tried unsuccessfully on numerous occasions to contact Dr Gupta and that it would continue trying.

34. On 4 March 2022, after several rounds to coordinate the scheduling of the hearing, the Parties were informed that the hearing would be held by video conference on 30 March 2022 at 11:00 CET.

35. On 8 March 2022, the Appellant again informed the CAS Court Office that it was unable to contact Dr Gupta.

36. On 10 March 2022, the CAS Court Office acknowledged receipt of the Parties' respective lists of hearing participants, which indicated the following persons were to appear:

- on behalf of the Appellant: Mr Ross Wenzel, WADA General Counsel, and Mr Anton Sotir, Counsel for WADA, Kellerhals Carrard.
- on behalf of the First Respondent: Mr Ankush Gupta, NADA Project Officer and Mr Yasir Arafat, NADA Law Officer.
- on behalf of the Second Respondent: Ms Rani Rana, the Athltete / Sceond Respondent, Mr Ajay Vasihnaw, witness, Mr Parth Goswami, Lawyer/Agent, Ms Daisy Roy, Lawyer/Agent and Mr Akshay Kumar, Lawyer/Agent.

37. On 14 March 2022, the Appellant objected to Mr Ajay Vaishnaw's attendance at the hearing as a witness on behalf of the Second Respondent.

38. On 23 March 2022, the Draft Tentative Hearing Schedule was sent to the Parties for any comments, which none of the Parties made.

39. On 25 March 2022, the Second Respondent sent a letter as to the testimony of Mr Vaishnaw and the Appellant again informed the CAS Court Office that it was unable to contact Dr Gupta.

40. Also on 25 March 2022, both Respondents returned the signed Order of Procedure.

41. On 28 March 2022, the Appellant returned the signed Order of Procedure.

42. On 29 March 2022, the Appellant once again objected to allowing Mr Vaishnaw to appear as a witness, and further objected to the Second Respondent's stated intention (as mentioned during the video-conference test held with the CAS Court Office and the Parties on the same date) to use one of her lawyers as a translator and also detailed its continued efforts to contact Dr Gupta.

43. Also on 29 March 2022, the Second Respondent finally submitted a brief summary of Mr Vaishnaw's expected witness testimony only one day prior to the hearing.

44. Still on 29 March 2022, the Parties were informed that the Appellant's request not to permit Mr Vaishnaw to provide oral testimony in the hearing in light of the fact that the Second Respondent has not provided a brief summary of his expected testimony would be addressed as a preliminary issue at the hearing.

45. On 30 March 2022, the Second Respondent transmitted the name of the interpreter she intended to use for the hearing scheduled to be held on the same date.

46. Also on 30 March 2022, the hearing was held. Beside the Sole Arbitrator and Ms Kendra Magraw, CAS Counsel, the following persons were present:

    a) For the Appellant:

1) Mr Ross Wenzel, WADA General Counsel;
2) Mr Anton Sotir, Counsel;
3) Mr Alexandre Csuzdi-Vallee, WADA Counsel.

b) For the First Respondent:

1) Mr Yasir Gupta, NADA Project Officer;
2) Mr Yasir Arafat, NADA Law Officer.

c) For the Second Respondent:

1) Ms Rana Rani, the Athlete;
2) Mr Ajay Vaishnaw, the Athlete's Coach (witness);
3) Mr Parth Goswami, Counsel/Agent;
4) Ms Daisy Roy, Counsel/Agent;
5) Mr Akshay Kumar, Counsel/Agent;
6) Ms Himani Singh, Translator.

47. The hearing followed a schedule agreed by the Parties and allowed for opening statements by both Parties, examination of witnesses by the Parties, cross-examinations, questions to the Parties, the Parties' closing statements and rebuttals.

48. Two questions were raised as preliminary questions at the hearing: (i) whether to allow the translator Ms Singh to participate; and (ii) whether to allow Mr Vaishnaw, the coach of the Athlete, to be a witness.

49. The Second Respondent proposed Ms Singh as interpreter the day before the hearing, but the Appellant had certain reservations about this, as regards her independence and impartiality. Therefore, cross-examination of the translator was allowed, after which it appeared that the Appellant and the Second Respondent had no reservations about her possible conflict of interest. Consequently, the Sole Arbitrator issued an oral decision that Ms Singh be permitted to act as translator.

50. The Second Respondent proposed that Mr Vaishnaw, the Athlete's coach, be heard as a witness; however, this was opposed by the Appellant. The facts are as follows:

- The Second Respondent did not propose Mr Vaishnaw as a witness in her Answer.
- Mr Vaishnaw is mentioned (not proposed) only at Exhibit sheets 24 and 26, being listed and signed on the hospital discharge form as the "guardian of the Athlete".
- The Second Respondent has not provided a brief summary of the expected testimony of Mr Vaishnaw. Therefore, in accordance with Article R44.1, para 3 of the CAS Code, the latter should not be permitted to appear as a witness at the hearing.
- As it was already apparent at that time that it would be difficult, if not impossible, to secure the testimony of Dr Gupta, the Sole Arbitrator, in accordance with Article R44.1 of the CAS Code, exercised the option for the Second Respondent to comply with all the conditions for proposing a witness for Mr Vaishnaw within an additional time limit.
- Consequently, the Second Respondent was twice granted a period of time by the CAS Court Office to provide a summary of the expected witness testimony of Mr Vaishnaw.

- Even after extensive correspondence between the CAS Court Office and the Second Respondent and extensions of deadlines, the Second Respondent failed to do within the time limits set for her.
- The Second Respondent submitted a brief summary of expected witness testimony only one day prior to the hearing, on 29 March 2022. The Appellant objected to such summary in writing and at the hearing.

51. The Sole Arbitrator, having heard the submissions of the Second Respondent and the Appellant and for reasons given later in this Award in the section on Preliminary Issues, decided not to allow Mr Vaishnaw to give testimony. Consequently, Mr Vaishnaw was asked to leave the hearing.

52. At the hearing, the Athlete made some declarations concerning inter alia her background, results, career and testing history. In response to the Appellant's questions regarding her knowledge and understanding of the anti-doping rules, she explained that she had not received any instruction, lecture, or information from the sports organisations in her home country regarding the procedures and prohibited substances. However, she is aware that doping is prohibited and is sanctioned with severe penalties.

53. During the hearing, a person identified on the Webex screen as "*Aram*" entered the virtual conference call unannounced. This individual had not been sent an invitation to the Webex hearing and was not on the list of participants. Accordingly, the person was immediately removed to the "waiting room" with instructions to wait while the hearing proceeded to ascertain the circumstances of this person's entry. The reason why the procedural decision was taken to withdraw the person to the "waiting room", but not to remove him from the hearing, was that there was a possibility that this person could be Dr Girish Gupta, whom the Parties to these proceedings had been trying unsuccessfully for a long time to contact with a view to calling him as a witness.

54. According to the Second Respondent, the yet not identified person was Dr Girish Gupta, the doctor who administered the impugned injection. The Second Respondent explained that the link to enter the virtual hearing was provided to this person by the Athlete himself.

55. The Appellant explained that in the days leading up to the hearing, the Appellant had made numerous attempts to contact Dr Girish Gupta to invite him as a witness but had been unsuccessful in doing so. The Appellant tried to make contact by telephone but found that the number given to him by the Second Respondent was incorrect. The Appellant also tried to use social networks, however unsuccessfully, and even more, after a few attempts the Appellant was blocked by the addressee. In any event, the Appellant stated that the person identified as "*Aram*" was not Dr Girish Gupta according to the profiles of Dr Girish Gupta that were available before he blocked the Appellant. In this respect the Appellant shared on the screen the pictures of its attempts to get in contact with Dr Gupta via social networks, including pictures of Dr Gupta. While the above circumstances were discussed at the hearing, the person who was in the "Waiting Room" left and did not return.

56. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

57. Before the hearing was concluded, the Parties confirmed that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

IV. POSITIONS OF THE PARTIES AND REQUESTS FOR RELIEF

58. The positions of the Parties may be essentially summarized as below. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.

A. The Appellant's Request for Relief and Positions

59. The Appeal Brief containing the following requests for relief:

"*WADA respectfully requests the CAS to rule as follows:*

1. *The Appeal of WADA is admissible.*
2. *The decision dated 5 October 2021 rendered by the Anti-Doping Disciplinary Panel of the NADA in the matter of Rani Rana is set aside.*
3. *Rani Rana is found to have committed an anti-doping rule violation.*
4. *Rani Rana 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 and/or ineligibility effectively served by Rani Rana before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
5. *All competitive results obtained by Rani Rana from and including 28 December 2019 until (and including) the date on which the CAS award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The arbitration costs shall be borne by NADA or, in the alternative, by the Respondents jointly and severally.*
7. *WADA is granted a significant contribution to its legal and other costs.*"

60. The Appellant's arguments can be summarized as follows:

i. Presence of drostanolone metabolites

61. The Appellant relies on Article 2.1 of the 2015 NADA Anti-Doping Rules ("ADR"). It is not disputed that the analysis of the sample as a result of the 28 December 2019 out-of competition doping control revealed the presence of drostanolone metabolites, specifically Drostanolone which is an anabolic steroid (i.e., a non-specified substance) prohibited at all times under S1.a of the WADA 2019 Prohibited List.

62. Consequently, the Athlete has committed an ADRV under Article 2.1 and/or Article 2.2 of the 2015 NADA ADR.

ii. Period of ineligibility

63. The Appellant considers that the sanction of a two-year ban imposed by NADA as inappropriate and requests the imposition of a four-year sanction.

iii. Fact finding and interpretation of facts

64. Even following the proceeding from the findings of fact in the Appealed Decision, it is not possible to interpret and justify the facts in the final conclusion. Even if one accepts that the Athlete had a knee injury, the explanation that the Prohibited Substance entered her body by injection with Drostoprime on 10 December 2019 relies solely on the Athlete's word and the statement of Doctor Gupta (submitted as a statement with the Athlete's Answer), who did not participate in the proceedings of the Anti-Doping Disciplinary Panel of the NADA.

65. There are even inconsistencies in the Athlete's explanation of origin for the reason that Drostanolone: (i) is no longer commercially available in India for any medical use; and (ii) is an anabolic (muscle-building) agent and therefore is not the type of medication that would be used for a joint injury or any injury. There was no legitimate medical reason to treat a knee injury with a Drostoprime injection. Therefore, it is unclear whether Dr Gupta administered Drostoprime to the Athlete to treat a knee injury.

iv. Intentionality

66. The ADRV must be considered intentional. Article 10.2.3 of the 2015 NADA ADR sets out that 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 antidoping rule violation or knew that there was a significant risk that the conduct might constitute or result in an antidoping rule violation and manifestly disregarded that risk*".

67. The Athlete's conduct would fall at least within the ambit of the second limb of Article 10.2.3 of the 2015 NADA ADR. Indirect Intention is subject to two requirements: (i) the Athlete knew that there was a significant risk that her conduct might constitute or result in an ADRV; and (ii) she manifestly disregarded that risk. In this context, the Appellant refers to CAS case law (CAS 2016/A/4609, para 63).

68. The burden of proof with respect to the question of intention lies with the Athlete who has the duty of establishing on a balance of probability that she did not know that her conduct might result in an ADRV and did not manifestly disregard that risk; however, the Athlete has failed to meet her burden to rebut the presumption of intentionality for several reasons:

- the Athlete herself claims that she was prescribed and injected with Drostoprime which is taken by injection, which is a serious and invasive process. This should have placed the Athlete on even greater alert;
- it is generally accepted that the duties of athletes in terms of anti-doping are heightened with respect to medications;

- the package of Drostoprime expressly states that it contains drostanolone, the only active substance being drostanolone propionate;
- the Athlete was tested two times before the doping control in December 2019 and was thus well aware of her duties, including the duty to ensure that no prohibited substance enters her body;
- the Athlete plainly sought no specific assurances from Dr Gupta, who was not a sports specialist, that the medication did not contain prohibited substances and made absolutely no attempt to ascertain herself whether or not it did. Further, she allowed herself to be injected without knowing or asking what was being injected into her body;
- the Athlete undertook no verification whatsoever, not even the most basic of steps such as reading the ingredients and cross-checking them against the Prohibited List or doing a basic Google search;
- if the Athlete really did tell Dr Gupta that she was an athlete subject to doping control, then it would demonstrate that she understood the risk that medication (particularly medication administered by intra-muscular injection) could contain prohibited substances;
- however, she assumed that risk without undertaking any verification whatsoever. That is the very essence of Indirect Intention.
- regarding the the Athlete's level of trust in the athlete-doctor relationship, a restrictive and harsh CAS case law approach concerning prescribing and administering medicines should be followed (CAS 2016/A/4609, para 72; and CAS 2016/A/4512, para 72).

B. First Respondent's Request for Relief and Positions

69. The First Respondent did not file an Answer to the Appeal.

C. Second Respondent's Request for Relief and Positions

70. The Second Respondent set out the following in her 5 January 2022 Answer to Appeal:

> "*In view of the aforesaid facts and circumstances, the Athlete humbly prays that the Ld. Panel must uphold the decision of the Ld. Appeal Panel of NADA and continue with the period of ineligibility sanctioned upon her. The said prayer is completely in line with the provisions of the WADA as well as the NADA Code.*"

71. The Second Respondent's arguments can be summarized as follows:

i. Anti-Doping Rule Violation as a result of out-of-competition doping control of 28 December 2019 - presence of drostanolone metabolites

72. The Second Respondent does not object that the analysis of the sample of 28 December 2019 revealed the presence of drostanolone metabolites, specifically Drostanolone, being an anabolic steroid prohibited at all times under S1.a of the 2019 Prohibited List.

ii. Fact finding and interpretation of facts, entering of the substance into the body

73. The medicine was administered only once and right after her first treatment with Dr

Gupta whom she considers "*... a well-known certified doctor and an expert of Orthopedic treatment...*" on 10 December 2019.

74. At the hearing, the Athlete stated that she was administered with the injection (the mention of injection is found in the prescription of Dr Gupta of 10 December 2019) "*... after the initial check ...*" was done by Dr Gupta, who offered his services free of charge, but there were no other diagnostic examinations like an MRI or RTG made prior the injection. Prior to being administered with the injection, the Athlete very clearly informed Dr Gupta that she is an athlete and therefore subject to sample collection by doping agencies.

75. In his statement dated 4 April 2020, Dr Gupta confirmed that he had administered the injection Drostoprime on 10 December 2019 for the treatment of the muscle pain and weakness. Therefore, there is no question of his contribution to the ADRV, which was recognized by the Appealed Decision in granting the Athlete a reduced sanction of two years.

iii. Intentionality

76. The Second Respondent's position is that she has successfully been able to establish how the substance entered her body. Even assuming that there was some degree of fault on the part of the Athlete, it is not enough to be held as an intentional doping. The Athlete did not consume any substance to enhance her performance but only to nurture her injury. The medical reports and the proof of subsequent surgery is evident enough that the Athlete did not intend to cheat nor was in the capacity to participate in any upcoming competitions for a period of over 6-8 months.

77. The Athlete fully trusted Dr Gupta regarding the state of the injury, the treatment, the medical non-controversiality of the injection and its non-controversiality from the point of view of the ADR, and there was no intentionality in her conduct.

78. As from her Answer to Appeal and her testimony at the hearing, the Athlete never received any formal education with respect to the ADR and further, her understanding of ADR is limited because she only understands her regional language. In fact, she does not even realise that ADR exist.

79. The injury was reported immediately at the training camp in Lucknow and she received adequate diagnostic and medical treatment afterwards.

80. On 28 December 2019, she completed the "*dope form*" accurately and in compliance with the requirements that the Athlete discloses the medication / supplements etc., consumed during the past 7 days.

81. The absence of an intention to act contrary to the ADR is demonstrated by the fact that the Athlete was not active in training and competitions, including in the months following the injection of 10 December 2019 until August 2020 when she had PCL surgery.

82. On receipt of the NADA Notice of Charge of 12 February 2020, the Athlete confronted Dr Gupta, who issued a "certificate" of 4 April 2020 that the injection was prescribed by him to the Athlete and that he was not aware of the WADA/NADA prohibited substance list.

83. The Second Respondent points out that the definition in Article 10.2.3 of the NAD ADR 2015 for the definition of "intentional" is based on the fact that the term is "... *meant to identify those athletes who cheat*" and that the intention to "cheat" was not and cannot be attributed to the Athlete.

iv. Trusting the physician

84. The Athlete trusted Dr Gupta who is a certified medical practitioner in India, which follows from the following:

- she told him that she was an athlete, and the correct choice was thus left to the doctor, and she could thus clearly not disregard the risk, as she was under the impression that she had not been given any banned substance;
- the Athlete has no knowledge about the substance administered by the doctor and therefore there was no question of the Athlete disregarding any risk. She could not have ascertained whether the physician was administering an injection which was available for commercial use or not;
- attributing such knowledge to the Athlete is harsh, unfair and unreasonable.

v. No intent of cheating - totality of circumstances

85. The Athlete claims that she never had intent to cheat for the following reasons:

(i) The Athlete was not training or competing because she was following the medical advice to refrain from training or competing for another 6 to 8 months.

(ii) The Athlete has established that the prohibited substance was used in a context unrelated to the sport performance; therefore, there was no case of intentional doping in any circumstances in the present case.

(iii) The Athlete only took the medicine to cure her injury. Therefore, Article 10.2.1.1 of the NADA ADR should apply, which provides that: "*The antidoping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the antidoping rule violation was not intentional*". Consequently, Article 10.2.2 of the NADA ADR should also be applied: "*If Article 10.2.1 does not apply, the period of Ineligibility shall be 2 years.*"

(iv) As from Article 3 of the NADA ADR 2015 the burden of proof which the Athlete is required to discharge is that of "balance of probabilities". In this respect CAS case law should be referred (CAS 2009/A/1926 & CAS 2009/A/1930, para 81), where "... *it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred*."

In this light, the Athlete has produced various medical prescriptions including the prescriptions of SAI doctors (at the Lucknow camp) and even diagnosis (MRI Reports), which establishes how and under what circumstances the prohibited substance entered in the body of Athlete.

The Athlete has also established as per balance of probabilities, that such prohibited substance was used for medical treatment and was unrelated to enhancing sporting performance.

(v) Concerning the same injury, the Athlete underwent a knee surgery in August 2020.

86. The Second Respondent claims that the mental trauma and stress suffered by the Athlete due to her PCL injury and the advice of Dr Gupta to stay away from sports for 6-8 months should be considered as relevant factors.

vi. No Significant Fault or Negligence

87. The Second Respondent submits that since the ADRV was not intentional and the starting point of determining the period of ineligibility in the present case has to be two years, the Athlete is entitled to a further reduction of the period of ineligibility under Article 10.5.2. of the NADA ADR (*Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*). The Second Respondent relies on the definition of No Significant Fault or Negligence as provided in Appendix I of the 2015 NADA ADR, in particular on the assessment of the Athlete's fault for negligence, when view in totality of circumstances. The circumstances that should be taken into consideration in this case includes the Athlete's humble background, her lack of anti-doping education, the trauma of career-threatening injury and the advice / prescription of Dr Gupta. Further, the circumstances of an athlete practising sport India should be taken into account, namely where the health sector in respect of sports is not developed, where there is a lack of specialists in sports medicine and where the income of the Athlete does not allow her to get a proper treatment from a specialist. Sports in such circumstances cannot be compared with those in developed countries.

88. Finally, the youth of the Athlete and her lack of experience, as well her knowledge and education in general, must be considered as mitigating factors. The combination of these circumstances results in the conclusion that the Athlete benefits from No Significant Fault or Negligence. In this respect, the Athlete refers to Recital 4 of the Summary of CAS 2013/A/3327 & CAS 2013/A/3335.

89. The Appealed Decision is based on the non-existence of intention on the part of the Athlete to cheat. The Athlete by virtue of prescriptions and reports has been able to establish as per the balance of probabilities, that such prohibited substance was used for medical reasons and not for performance enhancement because the sample was collected “out of competition”. Therefore, on the basis of such evidences and mitigating factors, the Appealed Decision reduced the sanction to an ineligibility period of 2 years from the date of sample collection.

vii. Period of ineligibility

90. The Second Respondent considers that the sanction of a two-year ban imposed by NADA as appropriate.

V. JURISDICTION

91. Article R47 of the CAS Code provides that:

"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."

92. Article 13.2.1. of the NADA ADR states as follows:

"In cases arising from participation in an International Event or in cases involving International Level Athletes, the decision may be appealed exclusively to CAS."

93. Article 13.2.3 of the NADA ADR also states as follows:

"In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: […] (f) WADA."

94. The Appealed Decision is a decision of the Anti-Doping Disciplinary Panel of India, therefore a decision within the meaning of Article R47 of the CAS Code.

95. The Appellant in this case is WADA, which is eligible to appeal the Decision Anti-Doping Disciplinary Panel of India. It is also noted that the Second Respondent is Ms Rani Rana, an international athlete.

96. Furthermore, the jurisdiction of the CAS as well as the applicable rules for the exercise of that jurisdiction is not in dispute between the Parties, as evident from the Parties' respective signatures on the Order of Procedure.

97. The Sole Arbitrator is satisfied that based on Article R47 of the CAS Code, CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

98. On 16 November 2021, WADA filed an appeal against the Appealed Decision of 5 October 2021.

99. Pursuant to Article 13.1.3 *cum* 13.2.3 of the 2021 NADA ADR, WADA has a right of appeal against the Appealed Decision directly to CAS if no other party has appealed the final decision within NADA's process.

100. Article 13.1.3 (Not Required to Exhaust Internal Remedies) of the NADA ADR 2021 provides as follows:

"Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within NADA's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in NADA's process."

101. Article 13.2.3 (Persons Entitled to Appeal) of the NADA ADR provides as follows:

"13.2.3.1 Appeals Involving International-Level Athletes or International Events

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: ... (a)–(e) ... (omitted) and (f) WADA.

13.2.3.2 Appeals Involving Other Athletes or Other Persons

In cases under Article 13.2.2, the following parties shall have the right to appeal:

... (a)-(e) ... (omitted) and (f) WADA.

For cases under Article 13.2.2, WADA, ...(omitted) shall also have the right to appeal to CAS with respect to the decision of the National Anti-Doping Appeal Panel.

Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the Anti-Doping Organization whose decision is being appealed and the information shall be provided if CAS so directs. 13.2.3.3 Duty to Notify All parties to any CAS appeal must ensure that WADA and all other parties with a right to appeal have been given timely notice of the appeal."

102. In accordance with Article 13.6.1 of the 2021 NADA ADR ... "*the filing deadline for an appeal filed by WADA shall be the later of: (a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed; or (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*" As the case file relating to the Appealed Decision was received by WADA on 26 October 2021, WADA's deadline to file its appeal cannot be earlier than 16 November 2021.

103. The Statement of Appeal filed on 16 November 2021 is, therefore, lodged within the 21-day time limit set forth under Article 13.6.1 of the 2021 NADA ADR.

104. It is also noted that neither of the Respondents argued that the appeal is inadmissible.

105. Based on the foregoing and in the absence of an objection to admissibility, the Sole Arbitrator concludes that the present appeal is admissible.

VII. APPLICABLE LAW

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

"The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

107. Article 24.7.2 of the 2021 NADA ADR provides the following:

"Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date, shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in these Anti-Doping Rules, unless the panel hearing the case determines the principle of 'lex mitior' appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 16 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in these Anti-Doping Rules (provided, however, that Article 16 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date)."

108. In light of the above, the 2021 NADA ADR will apply for procedural issues and the 2015 NADA ADR will be applied for substantive issues.

109. The 2021 NADA ADR and 2015 NADA ADR are therefore applicable to the present appeal.

110. As this arbitration is seated in Switzerland, Swiss law will also be applied to any lacuna in CAS procedural issues.

VIII. PRELIMINARY ISSUES

111. On 14 March 2022 and 29 March 2022, the Appellant objected to Mr Ajay Vaishnaw's attendance at the hearing as a witness on behalf of the Second Respondent. The Appellant stated that the Second Respondent did not call any witness in her Answer and thus further to Article R56 of the CAS Code, no further evidence may be adduced after the submission of the Answer except in exceptional circumstances; there is manifestly none in the present case. The Appellant also objected to allow Mr Vaishnaw to appear as a witness because Article R55 of the CAS Code requires either a witness statement or a summary of the expected testimony be provided and, despite being given every opportunity, the Second Respondent failed to provide one or the other. Even if she were to do so, it would not give WADA adequate opportunity to prepare for examination. Consequently, the Appellant submitted that Mr Vaishnaw should not be heard at the hearing.

112. On 29 March 2022, the Second Respondent finally submitted a brief summary of expected witness testimony only one day prior to the hearing.

113. In view of the express provision of Article R44 of the CAS Code on the time limits within which a witness must be proposed and a brief summary of his or her testimony must be submitted by the party proposing the witness, and in view of the fact that the Second Respondent was afforded this opportunity within two extended time limits, having been warned of the consequences of failure to submit or delay and having failed to do so, the Sole Arbitrator at the hearing, having heard the submissions of the Second Respondent and the Appellant, decided not to allow Mr Vaishnaw to give testimony. Any decision to the contrary would constitute an interference with a fair hearing, of which the Appellant would be deprived, faced with the fact that the brief summary was only submitted the day before the hearing and was thus manifestly late, therefore the Appellant did not have time to prepare for the hearing in relation to Mr Vaishnaw's testimony. Consequently, Mr Vaishnaw was asked to leave the hearing.

IX. MERITS

114. Since the presence of metabolites of Drostanolone is not disputed between the Parties, the questions raised which must be decided are in the dispute at hand the following:

A. Are all the facts and interpretation of facts undisputed?
B. Was there an intention of the Athlete and if there is no intent, is such relevant?
C. Should the Athlete's trust in Dr Gupta be relevant?
D. Existence and relevance of No significant Fault or Negligence?
E. The sanction - what should be the period of ineligibility?

A. Are all the facts and interpretation of facts undisputed?

115. This part of the Award focuses on how and in what circumstances the prohibited substance entered the Athlete's body and if the way of entering the body would be successfully proved, what exactly the Athlete revealed concerning her status and what are the consequence of that.

116. The Athlete claims that she was administered with the injection on 10 December 2019 after the initial check by Dr Gupta, free of charge, without other diagnostic examinations like an MRI prior to the injection. Through his statement dated 4 April 2020, Dr Gupta confirmed that he had administered the injection of Drostoprime on 10 December 2019 for the treatment of muscle pain and weakness. Therefore, although the probative value of this document is questionable, there is no question of Dr Gupta's role in the ADRV, which was recognized by the Appealed Decision in granting a reduced sanction.

117. Apart from the Second Respondent's statements and allegations in her Answer and at the hearing, the content of which is not corroborated by anyone, the only document attesting to how the prohibited substance entered the Athlete's body is Dr Gupta's written statement of 10 April 2020. The Second Respondent has also failed to produce

any medical documentation relating to her visit and treatment with Dr Gupta in December 2019, when she allegedly received the Drostoprime injection. Even though the Second Respondent herself refers to Dr Gupta's written statement of 4 April 2020 as a "certificate", it is a simple written statement by a doctor; nonetheless, the Sole Arbitrator does not question the authenticity of the said document. Nevertheless, the Sole Arbitrator finds that the document does not have the required probative value.

118. Further, the Second Respondent has failed to prove that the Athlete expressly warned Dr Gupta that, as an athlete subject to ADRs, she should not receive a substance prohibited under those rules. Dr Gupta's statement does not make this clear. In this context, the statement only contains the phrase he was *"... not aware of the WADA/NADA list of doping ...* ". The existence of the warning to which the Athlete refers could not be established by questioning Dr Gupta since he did not appear as a witness at the hearing, despite the Appellant's efforts to secure his presence and testimony. The reasons for the non-appearance of Dr Gupta can only be speculated in the circumstances, including the unexplained appearance of the person purported to be Dr Girish Gupta at the hearing, and may be interpreted either in favour or against the Second Respondent.

119. In view of the above, the Sole Arbitrator considers that (i) his decision cannot rely on Dr Gupta's written statement in any way, either in support of the contentions of the Second Respondent or in her favour and finally, (ii) the Second Respondent has failed to demonstrate how the prohibited substance entered her body.

B. Intention of the Athlete and Totality of the Circumstances

120. The Appellant argues that as to intentionality and the burden of proof, the Appellant relies on second limb of Article 10.2.3 of the NADA ADR and two conditions to be fulfilled in this respect: first, the Athlete knew that there was a significant risk that her conduct might constitute or result in an ADRV; and second, she manifestly disregarded that risk. The burden of proof lies with the Athlete and the Athlete failed to meet her burden to rebut the presumption of intentionality for several reasons, inter alia that (i) the Athlete did not react to the fact that injection as invasive treatment was used, (ii) the duties of athletes in terms of anti-doping are heightened with respect to medications, (iii) the package of Drostoprime clearly states that it contains Drostanolone, (iv) the Athlete knew her duties concerning doping because she was subject to two previous tests, (v) the Athlete sought no specific assurances from Dr Gupta that the medication did not contain prohibited substances and made no attempt to ascertain herself whether or not it did, (vi) the Athlete allowed an injection to be used without knowing or asking what was being injected into her body, and (vii) the Athlete blindfully relied on her declaration to the doctor that she was an athlete. Therefore, she must be given a four-year period of ineligibility.

121. The Second Respondent's position is that she has successfully been able to establish how the substance had entered her body. Even assuming that there was some degree of fault on her part, it is not enough to be held as an intentional doping. She did not consume any substance to enhance her performance but only to nurture her injury. The

Athlete claims that there was no intentionality in her conduct. In this respect she refers to none or at least only limited understanding of the ADR because she speaks only a regional language and because she does not even realise that the ADRs exist.

122. The Sole Arbitrator notes that it is the duty of the Athlete to establish on a balance of probabilities that she did not know that her conduct might result in an ADRV and did not manifestly disregard that risk. The balance of probability standard – set forth also by Articles 2.1 and 3.1 of the WADC and by the CAS jurisprudence – means that the athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified circumstance is more probable than its non-occurrence (i.e. CAS 2006/A/1067, para 7; CAS 2009/A/1926 & 1930). The Athlete claims that there was no intentionality in her conduct.

123. As to the Athlete's arguments that she has no or limited understanding of the ADRs because she speaks only a regional language, the ignorance of the language in which the ADRs are written and the limitation of linguistic knowledge to regional languages as a defence supporting the argument of the absence of "intentionality" cannot be accepted. If such a defence were admissible, it would allow a relatively large group of athletes to be exempted from the ADR on a global level, thereby giving this group unequal treatment and a privileged status.

124. Secondly, the plea of ignorance of the Second Respondent regarding the existence of the ADR cannot be followed because the Second Respondent is an athlete who has been involved in the sport for a long time, to the extent that she has reached the international level of competition and has been tested at least two times prior to the testing in December 2019. It is quite impossible that such a person, even if the defence that she had not received any doping education were accepted, would not even know that these rules existed and that they are applicable to her. Further, if the Athlete herself really did tell Dr Gupta that she was an athlete (at least implicitly meaning: subject to doping responsibilities) as she claims, this negates her plea of ignorance regarding the existence of the ADR. Relying on the status of an athlete demonstrates that she is not a person who does not know anything about the existence of ADR and further, that she understands the risk that medication could contain prohibited substances. Further, if she assumed that risk without undertaking any verification whatsoever that would be by definition acting with indirect intent, in the Sole Arbitrator's opinion.

125. The Athlete's claim that *"... the injury was reported immediately at the training camp in Lucknow, after which the athlete received appropriate diagnostic and medical care*" is not disputed. However, this does not absolve the Athlete from liability for the injection of the prohibited substance received (see Article 2.1.1 of the NADA ADR, providing that athletes are not exempt from ADRVs based solely on reliance on a medical professional). The subsequent medical diagnosis at the training camp is a different event at a different point in time, which does not change the fact that the Athlete received the injection more than one week earlier, without proper diagnosis and based solely on blind trust in Dr Gupta.

126. The Second Respondent justifies the absence of intent on the grounds that she duly and

fully completed the doping control form of 28 December 2019. It is not disputed that the Athlete actually filled in the "*dope form*" in the section requiring the indication of the medication/supplements consumed during the previous 7 days, i.e. that she correctly indicated the following medications: (i) Zerodol, containing the active ingredient aceclofenac, a weak analgesic, does not contain substances banned in sport (it is an analogue of the active substance of diclofen); (ii) Ciplox-500, containing the active ingredient ciprofloxacin, a fluoroquinolone antibiotic, most commonly used to treat infections of the urogenital area and which does not contain a substance prohibited in the sport; and (iii) Diclofenac, containing active ingredient diclofenac being a weak analgesic (NSAID), and which is also not banned in sport. None of them are prohibited and none of the three drugs contain the anabolic steroid drostanolone.

127. What is relevant for the present case is the absence of indication whatsoever of the injection of Drostoprime until the test of 28 December 2019. Nor do the documents exclude that the Athlete did not even mention the injection to the medical service at the training camp. The Athlete's statement that *"... The Athlete also informed and visited Sports Authority of India Doctors at the Camp who also recorded their prescriptions ..."*, which is understood to refer to her alleged disclosure of the injection, is only conditionally credible, even though it is not suported by any documentation. However, it is not possible to ascertain from this statement whether the Athlete (i) only described her injury and medical condition as such to the medical service or whether (ii) she also disclosed her previous treatment, including that with Dr Gupta and, if so, whether she disclosed that she had received Drostanolone via injection. From the sequence of events it can be concluded that the injection of Drostoprime was not disclosed because it can be assumed that a qualified medical service would have reacted, if the injection of a prohibited substance had been disclosed to it, if not with action, at least by informing the Athlete that a prohibited substance had been injected into her body. In general, the "dope form" is dated 28 December 2019, which is a completely different event in time from the injection on 10 December 2019 and the visit to the medical service in the camp between those dates.

128. There is no evidence to show that the Athlete even mentioned or in any way disclosed that she had recently received the injection in her contacts and medical examinations at the training camp. Given the testimony at the hearing, which indicated that the visit to Dr Gupta was a complex event due to lack of funding and travel to a remote location, it is unlikely that the visit and injection were not even worthy of mention. Besides that taking injection is a serious and invasive process, which should have placed the Athlete on even greater alert.

129. The foregoing in the context of the consideration of intent, given that the Athlete very consistently filled out the doping control form detailing the commercial names of the preparations she had consumed over the past seven days, casts reasonable doubt on the veracity of the Second Respondent's submissions.

130. Conseqently, the correct completion of the "dope form" cannot be considered an exculpatory argument.

131. The Second Respondent asserts that Article 10.2.3 of the 2015 NADA ADR's definition of the term "*intentional*" is "*... meant to identify those athletes who cheat*" and that the intention to "cheat" was not and cannot be attributed to the Athlete. The Sole Arbitrator notes that the definition goes on to include "*... the Athlete engaged in a conduct which he or she knew constituted an Anti-Doping Rule violation*..." and that *"the person 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*." The last part of the definition therefore sets a threshold that the Athlete has not reached. The Athlete was injected with a substance and blindly trusted her doctor to decide whether the substance was prohibited. Additionally, according to the Athlete's own account, she merely pointed out to Dr Gupta "*that she was an athlete*" and that he himself "*considered Drostalone to be the appropriate solution to her problems*". All above, in particular, the decision of the Athlete to leave the decision as to whether a substance is prohibited entirely to Dr Gupta, without thereby being relieved of responsibility for the presence of the substance in her body under Article 2.1.1 of the NADA ADR, does not support that the Athlete fulfilled the standard that she had exercised sufficient care to avoid "*...a significant risk that the conduct might constitute or result in an ADR violation ...*" (Article 10.2.3 of the NADA ADR).

132. The Second Respondent relies on medical reports and the proof of subsequent surgery as evidence that the Athlete did not intend to cheat. However, the Sole Arbitrator considers that medical reports and proof of surgery do not prove that the Athlete did not intend to cheat: rather, they are evidence of another event (surgery) in another time period (later). The two events are linked by the same fact (the knee injury and its treatment), but this does not allow the evidence and arguments relating to the second event to be transposed into the first one, or to excuse her from an ADRV.

133. The Athlete's conduct would fall at least within the ambit of the second limb of Article 10.2.3 of the 2015 NADA ADR, i.e. "Indirect Intention", which is subject to the requirement that the Athlete knew that there was a significant risk that her conduct might constitute or result in an ADRV and that she manifestly disregarded that risk. The Athlete is international level athlete and she was tested at least two times prior to the December 2019 test. In addition, in the present proceedings, she expressly claimed that, before administering the injection, she warned Dr Gupta that she was an athlete, which means that she was aware that she was subject to the ADRs. The manifestly disregarded risk stems from the fact that the Athlete did not ask what the contents of the injection were (the package of Drostoprime expressly states that it contains drostanolone, the only active substance being drostanolone) and that she blindly trusted Dr Gupta. She had at least two options as to whether the contents of the injection were prohibited: first, she could have carried out her own research. Second, she could have asked Dr Gupta to compare the specification of Drostoprime on the packaging or in the accompanying instructions with the list of prohibited substances. She did not do either option and, according to her own evidence, she stuck to the claim that she was an athlete. All the above does not absolve her from the fact that the responsibility for a prohibited substance in the body always lies with the person in whose body it is, not with the coach, the support staff, the counsellor, the doctor (strict liability; Article 2.1 of the NADA ADR).

134. The Second Respondent states that she had no intent to cheat, which she says is proven by her decision to follow the medical advice not to train and compete for another 6-8 months after the injection. Justification of the claim of non-cheating could not be established on the basis of the documentation on file and the hearing. There are only assertions in the Second Respondent's submissions that the Athlete followed the medical advice not to train or compete for 6-8 months after visiting Dr Gupta on 10 December 2019. The burden of proof is on the Second Respondent, who has failed to prove the non-existence of cheating in the light of the above. However, even if the Athlete had proven the absence of intent to cheat, *quod non*, Article 10.2.3 of the 2015 NADA ADR should be applied in its entirety and not just the part on the absence of cheating.

135. Further, the Athlete argues that her absence of intent should be indicated by the fact that she was given the Drostoprime injection in a context unrelated to sport performance. The argument cannot be accepted, because the prohibited substance was in the Athlete's body when she was present at the Lucknow training camp which by definition cannot be characterized as anything other than a sporting activity.

136. The Second Respondent relies on Article 3 of the 2015 NADA ADR where the burden of proof which the Athlete is required to discharge is that of the "balance of probabilities" and refers to CAS case law (namely CAS 2009/A/1926 & CAS 2009/A/1930). In order to satisfy the 51% requirement from chance from CAS 2009/A/1926 & CAS 2009/A/1930, the Athlete has produced various medical prescriptions including the prescriptions of SAI doctors (at the Lucknow camp) and diagnosis (MRI reports), which establishes how and under what circumstances the prohibited substance entered in the body of Athlete.

137. The Second Respondent's argument that she has also established as per balance of probabilities that such prohibited substance was used for medical treatment and was unrelated to enhancing sporting performance is not supported. The MRI prescriptions and diagnosis refer to the period after the alleged application of Drostoprime and to the period of diagnosis due to the subsequent surgery. These are different events (one: the injection – the other: the operation) and periods (injection December 2019 - operation August 2020). Secondly, the only evidence that could support the Second Appellant's claim is a passage in Dr Gupta's statement concerning injecting Drostoprime that "*I thought that is the most efficient way to treat her problem*". This statement does not specify whether (i) the problem was of a medical nature, i.e. the injury or the pain as such or (ii) the inability to train and compete. The decisive point is that Dr Gupta's statement of 4 April 2020 is inconclusive from an evidentiary point of view and therefore cannot be relied upon; the Sole Arbitrator notes, that the statement can only be recognised as a credible statement, and even then, only conditionally, not as probative (evidentiary). For the reasons set out above, his statement cannot support the Second Respondent's claim that she had no intention to cheat.

138. The Second Respondent's statement that she underwent a knee surgery in August 2020 is not disputed, but it does nothing to support the conclusion that the banned substance entered the Athlete's body unintentionally.

139. In view of the above, the Second Respondent did not prove that she acted without intent. Therefore Articles 10.2.1.1 and 10.2.2 of the 2015 NADA ADR cannot be applied.

C. Should trusting Dr Gupta be relevant

140. The Athlete enumerates a number of reasons why she trusted Dr Gupta's judgement and his treatment of the injury, which included the administration of a Drostoprime injection. Generally, the trust shown in a doctor is the condition *sine qua non* of the doctor - patient relationship. This is reinforced if the circumstances are such that the patient is less well educated, medically unsophisticated and distressed. Nevertheless, trust is not unconditional, especially if the patient is an athlete, albeit without doping knowledge, as the Athlete here claims, but nevertheless not totally without experience and general knowledge of doping and its consequences for her. A line has to be drawn between a patient's trust that the doctor will act in the best interests of patient's health and the expectation that a doctor will also comply with the ADRs. Regardless, reliance on a doctor does not excuse an athlete from being found to have committed an ADRV (Article 2.1.1 of the NADA ADR). In the specific case, it is clear that the Athlete claims to have had blind trust in Dr Gupta. Consequently, this does not allow her to exculpate herself by referring to the second part of the definition under Article 10.2.3 of the 2015 NADA ADR. Even if the Athlete was merely naive, this does not change the above conclusion.

141. The Athlete claims that she very clearly informed Dr Gupta that she is an athlete and therefore subject to sample collection by doping agencies. This can be interpreted in two ways: (i) the Athlete explained to the doctor her status and, therefore, the activity in which the injury occurred; (ii) the Athlete thereby, at least implicitly, intended to convey to the doctor that his or her procedures should be such that they would not constitute an ADRV. Another interpretation of the statement would be relevant to assist the Athlete, but it is not possible to infer from doctor's written statement what type of statement was actually made and as already pointed out above, Dr Gupta's handwritten statement of 4 April 2020 is only recognised as authentic (conditionally), not as probative.

142. Even if it was a statement within the meaning of the second interpretation, the Athlete still did not do everything that her due diligence required her to do in relation to the prevention of the introduction of a prohibited substance into her body, since she did not ask any additional questions when a relatively invasive procedure was announced to her. Even if above is ignored and the concept of "blind trust" in anti-doping terms of an uneducated and uninformed athlete who blindly follows the word and action of a doctor is accepted, this does not absolve her from the fact that the responsibility for a prohibited substance in the body always lies with the person in whose body it is, not with the coach, the support staff, the counsellor or the doctor. As stated in CAS 2016/A/4609 (Summary point 2):

"An athlete who takes a medication on the package of which a prohibited substance is listed knows or should at least know that the medication contains the prohibited substance. Furthermore, if e.g. the same medication is prescribed to the athlete on four

different occasions, the athlete has ample time at his or her disposal to verify whether the medication contains any prohibited substances. If under those circumstances the athlete does not even e.g. perform a simple internet research regarding the medication, but only relies on – wrong – advice by his (team) doctor(s), he or she manifestly disregards the risk and commits the anti-doping rule violation with "indirect intent". In this context there is an inherent significant risk that medications may contain prohibited substances; this is all the more so with respect to medications that are taken by intramuscular injection and are certainly not administered inadvertently through, e.g. a tablet.

Given that athletes are under a constant duty to personally manage and make certain that any medication administered is permitted under the anti-doping rules, an athlete cannot simply rely on a doctor's advice; it follows that e.g. the prescription of a particular medicinal product by an athlete's doctor does not excuse the athlete from investigating to his or her fullest extent that the medication does not contain prohibited substances.

The finding that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on no fault or negligence or no significant fault or negligence."

143. Thus, in the Sole Arbitrator's view, the Athlete's poor judgment in blindly trusting the doctor's procedure and administration of the injection and failing to conduct further research cannot be construed as an argument exonerating her from conduct under Article 2.1.1 of the 2015 NADA ADR. In the light of the above, but also in the light of consistent CAS case law regarding the level of trust in the athlete/doctor relationship approach concerning prescribing and administering medicines, the Second Respondent's reliance on trust in the doctor is unfounded and she cannot be found to have acted unintentionally or with No Significant Fault or Negligence.

D. No Significant Fault or Negligence

144. The Second Respondent starts from the position that she has proved that she did not have intent to cheat, and also asserts that she should benefit from No Significant Fault or Negligence, which would entitle the Athlete to a further reduction for period of ineligibility under Article 10.5.1 of the 2015 NADA ADR. In this context, the Athlete relies on an assessment of the totality of circumstances (Appendix I of the 2015 NADA ADR).

145. Appendix-I of the 2015 NADA ADR defines No Significant Fault or Negligence as follows: "*The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the antidoping rule violation.*"

146. The assessment of the totality of the circumstances, as has been undertaken previously in this Award, show that the Athlete did not discharge the requisite level of due diligence and therefore does not allow a reduction of the sanction under Article 10.5.2.

of the 2015 NADA ADR. Similarly, the Athlete's argument that she was young cannot be accepted as the Athlete was 23 years old at the time of the infringement and had participated as an international athlete in the U23 Senior World Championships that same year. According to the information in the case file, the 2019 test was not her first doping control test, so she knew and should have known the purpose of such testing and the duty of athletes to comply with the anti-doping rules.

147. Turning to the definition from Appendix I of the 2015 NADA ADR that "... *the Athlete must also establish how the Prohibited Substance entered his or her system*," while the Athlete has asserted that it was the result of an injection administered by a doctor, she has not irrefutably proven such and the burden of proof lies with her. In view of the above, the last quoted condition in Appendix I is not satisfied, which consequently does not justify invoking Article 10.5.2 of the 2015 NADA ADR.

148. In the context of the Appealed Decision, which is based on the Athlete's non-existence of intention to cheat, the Second Respondent submits that by virtue of prescriptions and reports, she has been able to establish as per the balance of probabilities, that such prohibited substance was used for medical reasons and not for performance enhancement because the sample was collected "out of competition". In this context, the Sole Arbitrator recalls that the serious diagnostic tests (MRI or similar) were only carried out in August 2020 prior to the knee surgery, not in December 2019, when only a personal examination was carried out prior to the Drostoprime injection. As already noted, these were two different events in two separate time periods, which are indeed linked by the same person (the Athlete) and injury. Therefore, it is not justified to assess the balance of probabilities for the first event through the facts and circumstances of the second.

149. The Athlete claims that the mental trauma and stress suffered by her due to her injury and the advice of the doctor to stay away from sports for 6 to 8 months should be considered as relevant factors. The prediction of 6-8 months of recovery and training due to injury occurs in the context of visiting Dr Gupta in December 2019. It is not possible to ascertain from the Parties' written submissions and the hearing whether the time prediction was intended to relate to part of Dr Gupta's explanation as part of his pre-application explanatory duty or as part of his post-application opinion. As a stress that would have influenced the Athlete's decision to receive or not to receive the injection and reinforced her blind trust in the doctor, the pre-injection prediction would have been relevant, but, as stated, it is not possible to determine to which point in time it refers. In view of the above, stress cannot be taken into account as a mitigating factor or as any other circumstance.

150. In view of the foregoing, the Second Respondent has failed to prove that she should benefit from No Significant Fault or Negligence. Even if she had succeeded in doing so, a reduction of the sanction would be unjustified in the circumstances of the case, judged through the totality of circumstances in the sense of Article 10.5.2 and Appendix I of the 2015 NADA ADR.

E. The Sanction

151. In their respective prayers for relief, the Appellant requests that the Second Respondent be sanctioned with a four-year period of ineligibility, while the Second Respondent requests that the two-year period of ineligibility in the Appealed Decision be upheld.

152. Although the Second Respondent's requests for relief, as set out in her Answer to Appeal, is limited to a period of ineligibility of a total duration of two years, her Answer to the Appeal asks that, in light of her argument that the ADRV was not intentional (Article 10.5.2 of the 2015 NADA ADR), the sanction be further reduced. The Sole Arbitrator has considered this argument for completeness, notwithstanding that the Athlete did not formally make it in her requests for relief.

153. It is recalled that Article 10.2 of the NADA ADR provides that:

> "***10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:*
>
> *10.2.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *10.2.2 The anti-doping rule violation involves a Specified Method and the NADA can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1 [sanctions for Substances of Abuse], the period of Ineligibility shall be two (2) years*." (emphasis in original)

154. In view of the above, it is recalled that the Sole Arbitrator has determined that the Athlete failed to prove: how the prohibited substance entered her body; that she did not commit the ADRV unintentionally; that she acted in accordance with the standard of required care at the time of the alleged introduction into her body; or that the conditions for "no significant fault or negligence" are met. It is also recalled that Drostanolone is listed under the S1 WADA 2019 Prohibited Lists as anabolic androgenic steroid and is a non-specified substance that is prohibited at all times.

155. In light of the above, it is clear that further to Article 10.2.1 of the NADA ADR, the Athlete does not qualify for the exception to the mandatory 4-year sanction for a Prohibited Substance, since the Athlete was unable to establish that the ADRV was not intentional.

156. As per Article 10.2 of the 2015 NADA ADR, the standard ineligibility sanction is a four-year period. The Athlete failed to demonstrate that the ADRV was not intentional. Therefore, the applicable sanction shall be of four years. Therefore, the Appealed Decision is overturned.

X. COSTS

(…).

*****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA on 16 November 2021 against the decision of the Anti-Doping Disciplinary Panel of the Indian National Anti-Doping Agency of 5 October 2021 is upheld.

2. The decision rendered on 5 October 2021 by the Anti-Doping Disciplinary Panel of the NADA is set aside.

3. Rani Rana is sanctioned with the period of ineligibility of four years starting from 28 December 2019.

4. The results achieved by Rani Rana from 28 December 2019 are disqualified with all respective consequences, including forfeiture of medals, points, and prize money.

5. (…).

6. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 31 March 2023

THE COURT OF ARBITRATION FOR SPORT

Peter Grilc
Sole Arbitrator