



DECISION of the FEI TRIBUNAL

dated 9 November 2018

Positive Anti-Doping Case No.: 2018/BS01

Horse: BLACK BEAUTY **FEI Passport No:** 105WE15/IND

Person Responsible/NF/ID: Sarvesh Singh PAL/IND/10161986

Event/ID: CCI1* - Delhi (IND)/2017_CI_1855_C_S_01_01

Date: 27 – 30 November 2017

Prohibited Substances: Boldenone and Meloxicam

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, chair
Mr. Cesar Torrente, member
Ms. Constance Popineau, member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** None; the PR waived his right for an oral hearing.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Sarvesh Singh PAL.

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

EADCMRs APPENDIX 1 – Definitions:

“Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his 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 EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments 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. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 BLACK BEAUTY (the "**Horse**") participated at the CCI1* in Delhi, India, from 27 to 30 November 2017 (the "**Event**"), in the discipline of Eventing. The Horse was ridden by Mr. Sarvesh Singh Pal who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event, on 30 November 2017.
- 1.3 Analysis of the urine and blood sample 5559258 taken from the Horse at the Event was performed at the FEI approved laboratory, the Racing Laboratory, The Hong Kong Jockey Club (HKJC), Sha Tin, Hong Kong, China (the "**Laboratory**"). The analysis of the urine sample has shown the presence of Boldenone and Meloxicam. The analysis of the blood sample has shown the presence of Meloxicam.
- 1.4 The Prohibited Substances detected are Boldenone and Meloxicam. Boldenone is an anabolic steroid used to increase muscle mass and modify behaviour, and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Meloxicam is a non-steroidal anti-inflammatory drug with anti-inflammatory and analgesic effects, and is classified as a Controlled Medication Substance under the FEI List. Therefore, the positive finding for Boldenone and Meloxicam in the Horse's sample gives rise to an Anti-Doping Rule violation under the EADCMRs (Article 10.8.6 of the EAD Rules). The fact that several Banned Substances are present could also be considered Aggravating Circumstances (Article 10.7 of the EAD Rules).
- 1.5 Next to the Horse, two (2) more horses competing at the Event also tested positive for Boldenone. The PRs in those two cases brought

forward some of the same explanations with regard to the positive findings.

2. The Further Proceedings

- 2.1 On 9 January 2018, the FEI Legal Department officially notified the PR through the National Federation of India ("**IND-NF**") of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 9 January 2018, until 8 March 2018. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 9 January 2018, the PR and the Owner were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 The PR and/or the Owner did not request for the B-Sample to be analysed. Hence, they accepted the results of the A-Sample analysis.

4. Written submissions by and on behalf of the PR

- 4.1 On 16 January 2018, the Colonel Mangal Singh submitted some explanations in relation to the three Indian Boldenone cases. In essence, this submission suggested that the Boldenone originates from Campesterol – a precursor of the anabolic steroid boldenone - which is found in many naturally occurring vegetables. *"On recent searches on Boldenone on internet it has been found that "Campesterol" a phytosterol found in most of the vegetables, oats, banana, potatoes, corn, cucumber, onion, lemon grass, pomegranate, grapefruit, pepper, coffee etc."* Hence, the occurrence of Boldenone in the three cases was some kind of contamination.

4.2 On 24 January 2018, the PR submitted his explanations in the case. In essence, he argued that:

a) He was Head Constable and a government employee with the Indo Tibetan Border Police Force. He has been riding the Horse, a government training horse, in various competitions. However, he participated in Asian Trial, *i.e.*, the Event, for the first time and he had no idea of doping. In the last two (2) years, he had won no prize money, but received a reward by the Central Police Organization of nearly 500 USD.

b) He accepted the test reports. With regard to the Meloxicam, the PR explained that the Horse suffered from a colic ten (10) days prior to the Event and the medical staff had given some supportive treatment to get rid of the colic. The Meloxicam was used to save the Horse from dying, and there had been no *mala fide* intention behind the administration. In this regard the PR submitted a Treatment Record of the Horse, which shows that the Horse was treated for a colic on 20 and on 21 November 2017.

c) In relation to the Boldenone positive, he had no idea how the substance got into the Horse's system, as it was not used by him or his staff. Sometimes they fed oats and corn oil that were rich sources of "Campesterol", which acted as a precursor of the Banned Substance Boldenone.

d) Finally, the PR submitted and provided statements that his annual salary was around 5,100 USD, and that he was responsible for ten (10) members of his family, as he was the only salaried member. Hence, taking into consideration his financial status, he requested that his fine and costs be reduced.

5. Written submission by the FEI

5.1 On 22 August 2018, the FEI submitted its Answer to the PR's submissions.

5.2 To start with, the FEI highlighted that there are three Indian positive Boldenone cases from the very same Event and the same discipline. The PRs and the Horses are stabled far from each other and the sole real connecting factor was that they fed rise oats and corn oil to their horses. In addition, the PRs were all people within the military or police.

5.3 The FEI submitted that the FEI has consulted the expert Dr. James Scarth, and requested him to clarify whether plant sterols could lead to

a positive finding of Boldenone at the concentrations given in the case at hand. According to the FEI, Dr. Scarth stated as follows:

"Ingestion and conversion of products containing plant sterols. I have not yet seen any convincing evidence of actual conversion of plant sterols to boldenone. Therefore, whilst the plant sterol theory remains plausible, it is not tangible in the same way as other explanations being scientifically proved.

Furthermore, whilst some of the other papers provided by the PR¹ demonstrate that some products can contain other steroids, there is no evidence that these will be converted to boldenone. Indeed, the study² that the defence do quote as converting some steroids to boldenone administration of a very high dose of testosterone. Since any feed products typically only contain relatively low amounts of steroids, I consider it highly unlikely that direct conversion of these to boldenone are the cause of the analytical findings for boldenone in the 10-50 ng/ml region in urine."

5.4 In essence, the FEI submitted as follows:

- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Boldenone, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of the Prohibited Substance in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault,

¹ Note: The expert refers to another PR of the three (3) Indian Boldenone cases, who submitted some scientific papers, and not to the PR in the case at hand.

² (<https://www.ncbi.nlm.nih.gov/pubmed/28322013>)

Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or in the alternative (iii) that he bore No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of Ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules). If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.

- c) The FEI submitted in this context that the PR had to provide clear and convincing evidence that proved how the Boldenone and Meloxicam had entered the Horse's system. The FEI submitted that following Dr. Scarth's expert opinion the FEI considered it highly unlikely that the presence of Boldenone was caused by products containing plant sterols, in the range of the concentration found in the case at hand, as well as in the other two cases. Furthermore, that there was no connection between oats and corn oil and the Boldenone positive. Further, the concentration of the Boldenone urine sample was around 30 ng/mL, which was not a non-significant concentration. Hence, in order to fulfil the threshold requirement on how the substances entered the body of the Horse, the PR would need to clearly establish the link between the positive finding of the Boldenone and those products. However, the FEI found the treatment for colic of the Horse ten (10) days prior the Event to be a plausible explanation of how the Meloxicam entered the body of the Horse. The Medication Logbook of the Horse could, however, provide further evidence on this matter.
- d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PR for the rule violation was the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, his personal duty to ensure that "*no Banned Substance is present in the Horse's body*". Further, that it was necessary to look at the definitions of fault, as defined in Appendix 1 of the EAD Rules, *i.e.*,

Fault, No Fault or Negligence, and No Significant Fault or Negligence.

- e) In light of the CAS jurisprudence (outlined below), the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for its doped condition, was a reasonable and justifiable stance.
- f) In this respect, it has been stated in several cases that the PR cannot rely on any other person to perform his duty of care. In CAS jurisprudence it is clear that *"the duty of caution or due-diligence is non-delegable."*³
- g) Further, CAS in the *Royal des Fontaines* case⁴ had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows:

"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument

"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"

The Sole Arbitrator respectfully agrees."

- h) In the *Glenmorgan* case⁵ (in para 209) the Panel confirmed that the rider was best fit to control the Horse before a competition. *"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*

³ CAS 2013/A/3318 Stroman v. FEI, para 71.

⁴ CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, para 57.

⁵ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

- i) The Panel further stated as follows (in para 203): *"The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant's sanction is not that of the Dr. It is the Appellant's own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-equine Athlete, is placed at the exercise of "utmost caution". It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body."*
- j) The FEI highlighted that Banned Substances are never to be found in a competition horse, as they are substances with no legitimate use and have a high potential for abuse. In the case of Boldenone, an anabolic steroid, the FEI had a zero-tolerance for such a substance in a competition horse.
- k) If in the present case a supplement was the source of the positive finding, the FEI wanted to highlight that, by using a supplement the PR took a risk. The FEI had warned extensively about the risk of use of supplements on several occasions, including a Supplement Warning on the FEI website. Any PR who used supplements for his horses did so at his own risk.
- l) Article 10.4 of the EAD Rules was not applicable in cases of supplements. And, since there was so far in the proceedings no proof of how the substance entered the body of the Horse, the FEI has not gone further in evaluating the fault and negligence of the PR nor to apply the provision of contaminated products. The standard sanction of a Banned Substance case had to therefore apply.
- m) Without any further evidence in the case, the FEI respectfully submitted that the period of Ineligibility imposed on the PR should be two (2) years in accordance with Article 10.2 of the EAD Rules.
- n) Pursuant to Article 9 of the EAD Rules, the results of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. This rule applied even if the period of Ineligibility was reduced or eliminated under Article 10 of the EAD Rules, *e.g.*, on the basis of No (or No Significant) Fault or Negligence. Furthermore, since this was a case with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article

10.1.2 of the EAD Rules. In cases of Team competitions, Article 11 of the EAD Rules also applied.

- o) The FEI requested the Tribunal to fine the PR in the amount of 3,000 CHF, and to order the PR to pay the legal costs of 1,500 CHF. However, the PR submitted that the financial situation in India was very different. Hence, if the PR provided evidence of income, and reasons for a lower fine/legal costs, the FEI requested the Tribunal to evaluate such evidence.

6. Further proceedings

- 6.1 On 1 November 2018, the FEI further submitted two (2) documents for the Tribunal to take into consideration, namely an expert statement by Dr. Scarth - which has been submitted by the FEI in the CANTOLINA case (one of the other two Indian Boldenone cases) -, and a summary of an interview by the FEI with the PR's trainer, Mr. Rodolph Scherer, dated 18 October 2018. The FEI has engaged Mr. Scherer as trainer for the Indian riders through the FEI Solidarity programme.
- 6.2 To start with, Dr. Scarth stated that Boldenone can be administered to a horse as a synthetic ester, most commonly boldenone undecylenate, but it can also be given as "free" (unesterified) boldenone or in one of more precursor forms such as boldienone. Potential natural (otherwise known as endogenous) sources of boldenone in horse urine samples were (i) microbial production in urine (data supporting this hypothesis for boldenone formation was relatively strong); (ii) ingestion of contaminated feed samples (data supporting this hypothesis for boldenone formation was relatively strong); and (iii) ingestion and conversion of products containing plant sterols. The latter theory was plausible, and research paper existed, however he had not yet seen any convincing evidence of actual direct conversion of plant sterols to boldenone. With regard to a paper provided to him by the FEI⁶, Dr. Scarth stated that the authors only used thin layer chromatography (TLC) as an analytical detection method and not mass spectrometry. Since TLC would not be accepted as a method of qualitative identification by the Association of Official Racing Chemists (AORC) no conclusions from this study could be drawn at this time. Therefore, while the plant sterol theory remains plausible, it was not tangible in the same way as (i) and (ii). Furthermore, while some of the papers the PR cites demonstrate that some products can contain other steroids, there was no evidence that these will be converted to

⁶ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5042298/>

boldenone. The PR refers to a study based on the administration of very high dose of testosterone. Since any feed products typically only contain relatively low amounts of steroids, he considered it highly unlikely that direct conversion of these to boldenone were the cause of the analytical findings for boldenone in the 10-50 ng/ml region in urine, such as in the case at hand. The only definitive way of determining whether boldenone has been administered exogenously was the detection of an intact ester in blood/hair. To his knowledge, in the case at hand, associated plasma samples were taken, but these were not analysed for the presence of boldenone esters due to potential instability.

6.3 In response to the main arguments of the PR in the CANTOLINA case, Dr. Scarth stated as follows:

*"A) From my PhD test the rider highlighted:
Chapter 1, Page No 30, 31*

The steroid hormones considered in this review chapter are the androgenic-abolic steroids (AASs) that potentially form precursors within the body such as cholesterol and pregnenolone (see figure 1). These include testosterone, nandrolone, boldenone and dehydroepiandrosterone (DHEA), as well as their numerous catabolic products and any precursor compounds that might potentially lead to conversion to these steroids within the body.

B) The rider further stated:

Due to possible relation between Gamma Oryzanol, cholesterol, testosterone and Boldenone. Detail literatures along with links are attached as Appx A which talks about Gamma Oryzanol, cholesterol, testosterone and relation between cholesterol and testosterone. Additional literature giving evidence of boldenone as minor metabolites of testosterone in equine is attached as Appx B. This literature leads to ascertain that excessive gamma oryzanol has a direct effect on cholesterol. And Cholesterol had a chemical similarity with Testosterone. Excessive gamma oryzanol have direct affect on value of good/bad cholesterol as Cholesterol is a grey element and there is chemical similarity between Testosterone and cholesterol. In addition to above cholesterol value and testosterone are directly proportional to each other. Vide Appx B it is proven that boldenone as a minor metabolite of testosterone in equine.

My responses to the above points A and B were as follows:

A) In relation to the defence's use of my PhD thesis extract, this

sentence was qualified by the term '...potentially derive from precursors within the body...' I was not claiming that boldenone was a known metabolite of any of the other natural steroids in the body only that it must be listed as one of the possible sources until more research is conducted.

B) On the subject of boldenone being a minor metabolite of testosterone as stated in the published Hong Kong paper in the defence's appendix B, the concentrations of testosterone that needed to be reached before boldenone was observed were very large and resulted from a large excess testosterone administration. I therefore consider it very unlikely that minor to moderate elevation of natural testosterone levels as might theoretically occur with some feeds etc would lead on its own to the observation of boldenone as a direct testosterone metabolite.

Regarding the gamma oryzanol product listed in appendix A, I am not aware of any evidence of elevated steroid levels in the horse (whether boldenone or otherwise). I can only comment with full authority from a laboratory angle, but I would have to question how sensible it would be for anybody to administer this product if they have read the specific product literature that appears in appendix A. Such phrases as '...may conflict with the rules of equestrian sport...' and '...use it for increasing testosterone and human growth hormone levels...' would give me concern but this is up to the FEI to determine as I'm not sure of your policy on a substance that can be administered with the possible intention of increasing hormone levels for performance gain. Another part of appendix A states '...In fact, animal studies suggest that gamma oryzanol might even reduce testosterone production...' so it is not even clear if the product does raise hormone levels.

Even though I feel that the specific evidence submitted by the defence does not offer any theories that, on a balance of probability, explain the boldenone result this does not necessarily mean that the animal has been administered the drug. As detailed in my earlier email there are currently a number of other plausible theories that do not involve the trainer or other animal staff administering any prohibited product. I appreciate that this makes it difficult for you to decide how to proceed but on some occasions such as this we simply don't yet have the methods to distinguish between natural production and exogenous administration of a drug."

6.4 According to the FEI, Mr. Scherer when interviewed by the FEI explained that the three riders (including the PR) had been selected to train in France for the upcoming Asian Games, which ultimately did not

happen as their horses tested positive at the Event. The trainer has informed the FEI that the riders were very humble persons who took good care of their horses. He further confirmed that none of the riders would have the money to buy the Boldenone (approximately a three (3) months salary) and neither would the riders have the knowledge of how to inject a horse. The trainer further explained that the knowledge of sports horses and doping, especially among veterinarians, in India was very low; however the horses were very well taken care of. In relation to the feed and feed quality in India, the trainer explained that the feed was usually bought at the local producer and farm or at the cooperative for feed, which produces feed for all kind of animals. The feed was not packaged, and contamination was therefore highly likely. The same type of feed was also used by organisers, which provided feed at events. Finally, the trainer explained that he could not exclude sabotage, and that all Indian riders were truly scared of sabotage, as sabotage happened on a national level and was thus not unusual in India.

- 6.5 On 2 November 2018, the Tribunal granted the PR with the opportunity to comment on the two documents submitted by the FEI. The PR however chose not to provide any comments.

7. Jurisdiction

- 7.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

8. The Person Responsible

- 8.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he has competed with the Horse at the Event.

9. The Decision

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results

evidence the presence of Boldenone and Meloxicam in the urine sample and Meloxicam in the blood sample taken from the Horse at the Event. The PR accepted the accuracy of the test results and the positive finding. Boldenone and Meloxicam are Prohibited Substances under the FEI Equine Prohibited Substances List and the presence of the Boldenone in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules. The presence of Meloxicam in a Horse's body is prohibited during an Event without a valid Veterinary Form, which has not been requested in the case at hand.

- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.3 Pursuant to Article 10.8.6 of the EAD Rules, where a PR based on the same factual circumstances is found to have committed a violation involving both a Controlled Medication Substance under the ECM Rules and a Banned Substance under the EAD Rules – such as the PR in the case at hand -, the PR shall be considered to have committed one EAD Rule violation and the sanction imposed shall be based on the Banned Substance that carries the most severe sanction.
- 9.4 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 9.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 9.6 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 9.7 To start with, the Tribunal has taken note of the PR's explanations as to the origin of the Meloxicam in the Horse's system, namely that the Horse had suffered from a colic ten (10) days prior to the Event and that medical staff had given some supportive treatment to get rid of the colic. In fact, the Treatment Record of the Horse shows that the Horse was treated for a colic on 20 and on 21 November 2017. The Tribunal has

also taken note of the FEI's position in the regard, namely that the FEI found the treatment for colic of the Horse ten (10) days prior the Event to be a plausible explanation of how the Meloxicam entered the body of the Horse.

- 9.8 While the Tribunal finds that this could be a plausible explanation, the Tribunal also finds that the PR has not established the source of the Boldenone – which is required – for the reasons outlined in the following.
- 9.9 The Tribunal has taken note of the PR's explanations as to the origin of the Boldenone in the Horse's system, as well as of the FEI's submissions in this respect.
- 9.10 The Tribunal, on one hand, notes that the science relating to Boldenone presence is in a developing state. In this case it cannot determine whether its presence was induced endogenously or exogenously. Moreover, through no fault of either the PR or the FEI, the blood samples could not be analysed; had that been able to be done the cause would have been confirmed one way or the other.
- 9.11 However, and more importantly, the Tribunal also notes that the PR seems to not have had any knowledge of the EADCMRs and FEI Rules in general, as otherwise he would have clearly been aware that no Controlled Medication Substances are allowed in a Horse's system during an event, such as the Event in question, and everything that goes with it, *i.e.*, such as checking medication against the FEI List, being aware of withdrawal times, and where possible and necessary requesting for a Veterinary Form. While this lack of anti-doping knowledge seems to be not uncommon in the equestrian sport in India, the fact that three (3) horses tested positive at the same Event, and two (2) Prohibited Substances were found in the Horse's system in the present case, should be alarming to the FEI and the IND-NF, and encourage them to improve their anti-doping programmes, especially with regard to education.
- 9.12 As a result, the Tribunal holds that the PR has not established – on a balance of probability, as required under Article 3.1 of the EAD Rules – how the Boldenone has entered the Horse's system.
- 9.13 The Tribunal therefore finds that Articles 10.4 and 10.5 of the EAD Rules cannot be applied in the case at hand. Furthermore, the Tribunal notes that the PR does not claim the applicability of Article 10.6 of the EAD Rules.
- 9.14 From the foregoing, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article

10.2 of the EAD Rules, is possible.

- 9.15 The Tribunal takes note that the PR has been provisionally suspended since 9 January 2018, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension.
- 9.16 Regarding fine and costs the Tribunal has taken note of the PR's submission concerning his financial situation, as well as the evidence provided in this regard. In taking into account all specific circumstances in the present case and the PR's financial situation, and thus his ability to pay the fine, the Tribunal decides to impose a fine of 250 CHF, and to not impose any costs on the PR.
- 9.17 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

10. Disqualification

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

11. Sanctions

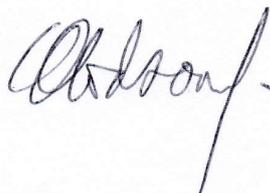
- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years**, the period of Provisional Suspension, effective from 9 January 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 8 January 2020**.
 - 2) The PR is fined **two hundred fifty Swiss Francs (CHF 250,-)**.
 - 3) No costs shall be imposed on the PR.

- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 11.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL



THE CHAIR, Mr. Chris Hodson QC