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October 05,2016, New Delhi, INDIA

TREAT FOR TENNIS FANS – SHARAPOVA BAN REDUCED

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TREAT FOR TENNIS FANS – SHARAPOVA BAN REDUCED

The Court of Arbitration for Sports (“CAS”) has finally given its arbitral award (“CAS Award”) in the dispute between Ms. Maria Sharapova and the International Tennis Federation (“ITF”) wherein Sharapova had challenged the 2 year ban imposed by the by the Independent Tribunal appointed by the ITF (“Tribunal”) in its decision dated June 6, 2016 (**Decision**) (which has been analysed in detail in our earlier article circulated on July 4, 2016, also available at <http://www.mondaq.com/india/x/510020/Sport/Ban+On+Sharapova>). The ban was imposed on Sharapova for committing an anti-doping rule violation under article 2.1 of the Tennis Anti-Doping Programme 2016 (“TADP”).

Brief Facts and Arguments Presented in front of CAS Panel:

During the proceedings before the CAS, Sharapova after summarizing her personal and sporting history, underlined that she has throughout her career, maintained an immaculate disciplinary record and would never deliberately use prohibited substances and be in violation of the anti-doping rules. During her submissions, Sharapova while referring to the provisions of TADP prescribing consequences for violation of anti-doping rules, primarily referred to Article 10.5 of TADP which allows for a reduction in the penalty on the basis of the principle “No Significance Fault or Negligence”. As per the CAS Award, during the proceedings, Sharapova, *inter alia*:

- accepted that she bears some degree of fault and therefore does not plead a defence of “No Fault or Negligence”;

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- agreed to disqualification of her results at the 2016 Australian Open and did not challenge the Decision in this regard;
- confirmed that the lack of intentionality (in committing the violation for purposes of article 10.2.2 of the TADP) was acknowledged by the Tribunal and therefore the sanction should be 2 years of ineligibility;
- emphasized that CAS has discretion to reduce the period of ineligibility to 1 year upon establishment of the principle "No Significant Fault or Negligence"; and
- requested the CAS panel to exercise its discretion to reduce the ineligibility to a shorter period, consistent with the principle of proportionality.

Sharapova further described the extent and effectiveness of the system she had in place to ensure anti-doping compliance and underlined that "*athletes are permitted to delegate elements of their anti-doping obligations. If a mistake later arises, the fault to be assessed is not that made by the delegate but the fault made by the athlete in his/her choice*".

In light of the above statement, it was deliberated that "*Sharapova cannot be faulted for relying on the services of one of the largest best resourced sports managements firms and of Mr Eisenbud, who had advised her since she was 11 years old, had performed thorough anti-doping checks and assistance for her over several years with diligence and urgency, and understood better than anybody the catastrophic consequences of a positive test.*"

Sharapova argued that the World Anti-Doping Agency ("**WADA**") was aware that Meldonium was widely known under the name of 'Mildronate' and a large number of athletes use 'Mildronate' but still failed to mention the name 'Mildronate' on the 2016 Prohibited List and to issue specific warnings in this regard. Sharapova, thus, contended that her error, to an extent, is also attributable to WADA's failure and therefore, under the circumstances, she met the the criteria of "*No Significant Fault or Negligence*".

The ITF had submitted that "*this case has exposed the failure of the Appellant to take responsibility for discharging her anti-doping responsibilities herself (in particular, checking whether her medication contained any prohibited substances). Instead [she] delegated the job to her (hopelessly unqualified) manager, without giving him any proper instructions or procedures, or doing anything to supervise or control his work or to check that what he had done was sufficient to ensure she would not fall foul of the anti-doping rules. In such circumstances, it was hardly surprising that this arrangement failed completely, causing her to test positive in January 2016 for a drug, meldonium, that she had been taking for a long time but that had just been put onto the Prohibited List. In such circumstances, the rules and the constant CAS jurisprudence are clear: against the starting-point that she must use 'utmost caution' to ensure that no prohibited substance enters her system, the Appellant's failure to delegate*

her responsibilities to a properly qualified person, to provide proper instructions, to lay down proper procedures, and to supervise that person's compliance with those procedures, make her significantly negligent, and therefore the Independent Tribunal was right not to give her any reduction from the two-year ban proscribed in the Code and the TADP".

After hearing both the parties, following issues were to be examined and decided upon by the CAS panel:

1. What is the player's level of fault and more specifically, did the player commit the anti-doping rule violation with "No Significance Fault or Negligence"?
2. If so, what is the proper sanction for period of ineligibility for the player?

Looking into the facts of the case and hearing both the parties, the CAS panel opined that:

- Sharapova chose to rely on Mr. Eisenbud and his organization for performance of all anti-doping related matters, which choice was found to be reasonable by CAS panel. However, Sharapova did not establish any procedure to supervise and control the actions performed by Mr. Eisenbud while discharging the task he was entrusted to perform nor was there any procedure for reporting or verification to ensure actual discharge of duties by Mr. Eisenbud; and
- Sharapova had reduced perception of the risk being incurred while using 'Mildronate' due to number of reasons which, *inter alia*, included that 'Mildronate' was initially consumed by Sharapova under the supervision and prescription of Dr. Skalny (post verification of the substance from ITF) and the same was consumed for medical reasons and not as a performance enhancing drug.

Final Award:

Sharapova's claim to the principle of "*No Significant Fault or Negligence*" was accepted by CAS panel. For the purposes of period of ineligibility, the CAS panel noted that Sharapova does bear some degree of fault which prevents reduction of the period of ineligibility to the minimum prescribed period under the TADP. CAS panel thus decided that an ***ineligibility period of 15 months*** is appropriate to the degree of fault attributable to Sharapova.

Effects of the Award:

Post the CAS Award, Sharapova has made a public statement claiming that October 4, 2016 has been one of her happiest days and is planning a strong return to the tennis circuit in 2017.

2016 has arguably been one of the historic years in women tennis, during which the game saw two new first time grand slam champions [Angelique Kerber winning the Australian Open and US Open (eventually gaining number 1 rank) and Garbine Muguruza winning the French Open] and Monica Puig winning the Olympic gold medal.

Sharapova, having won all 4 grand slams at least once, and settling for silver at the London Olympics in 2012, would have been eagerly looking forward to lay her hands on gold in Rio Olympics in 2016. Thus, the ban imposed on Sharapova definitely was a great setback for Sharapova in her tennis career and came possibly at the most dreaded time, as it took away the opportunity of participating in Rio Olympics.

However, the CAS Award has come as a big relief and the reduced period of ineligibility 15 months is deemed to be commencing from January 26, 2016 till midnight of April 25, 2017. This effectively means that Sharapova will be missing out on the hard court season of tennis tournaments in beginning of 2017 and her first tennis tournament will be the clay court tournament beginning the week of May 1, 2017 in Prague, Czech Republic or in Rabat, Morocco.

This also means that for second consecutive year Sharapova will be missing out on the opportunity of participating in the Stuttgart Open by 2 days as the tournament is scheduled for the week of April 24, 2017. Stuttgart Open and has arguably been one of Sharapova's most preferred clay court tournaments where she won for 3 (three) consecutive years from 2012 to 2014.

At the time of her return, Sharapova will have no ranking points and will be dependent on wild cards for her comeback tournaments as she has not had a chance of defending her ranking points for any of the tournaments in 2016. Sharapova will have a chance of participating in maximum 4 tournaments to play some competitive tennis, gain her form back and also gain some ranking points before the French Open, 2017 (scheduled to commence on May 29, 2017). The women singles draw of the French Open, 2017 will be an interesting proposition as Sharapova will most likely be going into the draw as an unseeded player. Sharapova, in all probabilities, would be looking to climb the rankings as early as possible and go into Wimbledon (being one of her favourite tournaments) as a seeded player. Sharapova on the centre court would be a sight for sore eyes, for she was missing in action at the 2016 Wimbledon Championships.

Another noteworthy proposition is that the timing of Sharapova's return to professional tennis is the beginning of the clay court season which is not the most preferred surface for Sharapova, even though during her career she has won 12 clay court tournaments which includes French Open in 2012 and 2014.

Sharapova's return in May, 2017 will be eagerly awaited by the tennis fraternity and fans across the globe. The 15-month break from tennis although quite stressful from the player's perspective, may prove to be a blessing in disguise for Sharapova, as the rest for her muscles and body during this period may eventually help her prolong her tennis career. Sharapova will definitely be looking for a strong comeback and go on to add some more trophies to her cabinet and will also be looking at strengthening her chances of participating in the 2020 Tokyo Olympics and claiming an Olympic gold medal to add to her already accomplished tennis achievements.

Feedback

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