

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ICC ANTI-CORRUPTION CODE FOR PARTICIPANTS AND THE CRICKET CANADA ANTI-CORRUPTION CODE

between:

**THE INTERNATIONAL CRICKET COUNCIL (“ICC”)
(ON ITS OWN BEHALF AND ON BEHALF OF CRICKET CANADA (“CC”))**

-and-

MR MEHAR CHHAYAKAR

Award

1 Introduction

- 1.1 By Notices of Charge dated 16 October 2019 and 15 April 2021, Mr Mehar Chhayakar (“Mr Chhayakar”) was charged with breaching Code Articles 2.1.1 and 2.1.4¹ by his attempts to contrive to fix aspects of matches in the Zimbabwe v UAE series in April 2019 and matches in the GT20 2019 in Canada, and to entice, induce and/or solicit other Participants to become involved in his attempts to fix. In addition, he was charged with breaching Code Articles 2.4.6 and 2.4.7 by his repeated failures to cooperate with the ICC Anti-Corruption Unit’s (“ACU”) investigation and his consequent obstruction of the ACU’s investigation.

¹Being the ICC Anti-Corruption Code (“the Code”) and Cricket Canada (Anti-Corruption Codes (“the CC Code”). The terms of the CC Code are based on the Code, with appropriate modifications to reflect that it applies only to domestic matches as distinct from international matches. Therefore all references in this Award to the Code should be considered to reflect the terms of both the Code and the CC Anti-Corruption Code, unless specifically otherwise stated.

1.2 Mr Chhayakar has denied all the charges he is facing and thus the matter has been referred to this Anti-Corruption Tribunal (“the Tribunal”) under the Code in order to determine them.

2 The Parties

2.1 The ICC is the international federation responsible for the global governance of the game of cricket. As part of its continuing efforts to maintain the public image, popularity and integrity of cricket, and in particular to take the strongest possible stand against the scourge of match-fixing and related corruption in the sport (“the integrity policy”), the ICC has adopted and implemented the Code. The Code (i) sets out details of the conduct that, if committed by a Participant in relation to an International Match, will be considered an offence under the Code, (ii) provides ranges of sanctions that are to be imposed in the event of the commission of an offence, (iii) establishes the disciplinary procedures to be followed where an offence is alleged.

2.2 Cricket Canada is the national federation responsible for the governance of the game of cricket within Canada and an Associate Member of the ICC². In pursuit of the integrity policy and fulfilment of its obligations as a Member of the ICC, CC adopted and implemented the CC Code. The CC Code (i) sets out the details of the conduct that, if committed by a Participant in relation to a Domestic Match, will be considered an offence under the CC Code, (ii) provides a range of sanctions that are to be imposed in the event of the commission of an offence, (iii) establishes the disciplinary procedures to be followed where an offence is alleged.

2.3 The ICC’s Anti-Corruption Unit (the “ACU”) was appointed by CC as the Designated Anti-Corruption Official for the purposes of the CC Code at the 2019 Global T20, a

² The ICC has two categories of membership: (i) Full Members of which there are 12, which are governing bodies for cricket of a country recognised by the ICC, or nations associated for cricket purposes, or a geographical area), and (ii) Associate Members of which there are 94, which are the governing bodies for cricket of a country recognised by the ICC, or countries associated for cricket purposes, or a geographical area, which do not qualify as Full Members, but where cricket is firmly established and organised.

domestic T20 franchise tournament sanctioned by CC and played under its jurisdiction under the ACU services agreement dated July 23 2019.

- 2.4 Consequently, all powers ascribed to CC and/or the Designated Anti-Corruption Official under the CC Code in respect of the 2019 GT20 (including but not limited to the conduct of investigations, charging and provisional suspension decisions, and the conduct of disciplinary proceedings) were delegated by CC to the ACU.
- 2.5 Mr Chhayakar is a cricketer, batsman/wicket-keeper, who has played for various first division clubs in the UAE and, inter alia, represented the UAE in the under 19 ACC club cup in 2012.

3 ICC Jurisdiction over Mr Chhayakar

- 3.1 Code Article 1.5 specifies that each Participant is bound by the Code and, among other things, is deemed to have agreed:

“1.5.1 not to engage in Corrupt Conduct in respect of any International Match, wherever it is held and whether or not he/she is personally participating or involved in any way in it;

1.5.2 that it is his/her personal responsibility to familiarize him/herself with all of the requirements of the Anti-Corruption Code, and to comply with those requirements (where applicable);

1.5.3 to submit to the jurisdiction of the ICC to investigate apparent or suspected Corrupt Conduct that would amount to a violation of the Anti-Corruption Code;

1.5.4 to submit to the jurisdiction of any Anti-Corruption Tribunal convened under the Anti-Corruption Code to hear and determine (a) any allegation by the ICC that the Participant has committed Corrupt Conduct under the Anti-Corruption Code; and (b) any related issue (e.g. any challenge to the validity of the charges or to the jurisdiction of the ICC or the Anti-Corruption Tribunal, as applicable)...”

3.2 Code Article 1.4.1 specifies that the following persons will constitute Players and thus Participants bound by the Code:

“any cricketer who:

1.4.1.1 is selected (or who has been selected in the preceding twenty-four (24) months) to participate in an International Match and/or a Domestic Match for any playing or touring club, team or squad that is a member of, affiliated to, or otherwise falls within the jurisdiction of, a National Cricket Federation.”

3.3 On 2 August 2017, Mr Chhayakar represented Aries YTCA cricket club in a match against Atlas Foundation YTCA. Representatives of the Emirates Cricket Board³ (“ECB”), an Associate Member of the ICC and the national federation responsible for the governance of the game of cricket within the UAE, have confirmed in an email dated 25 August 2019 that this match constituted official cricket played under the auspices of the Ajman Cricket Council (“ACC”) and thus under the auspices of the ECB to which the ACC is affiliated⁴.

3.4 The Tribunal is accordingly satisfied that, as someone selected to play in Domestic Matches, Mr Chhayakar fell within the definition of a Player for the period 2 August 2017 until midnight on 1 August 2019, and thus was a Participant between those dates including at the time of his alleged offences. It notes too that in his brief comment on the charges Mr Chhayakar has not disputed jurisdiction and has indeed stated his awareness of a participant’s obligations under the Code - see his defence to 2021 Charge No 2 “Being a cricketer I do know the pros and cons as per the ICC Regulations”.⁵

4 The Charges

4.1 On 16 October 2019 the ICC issued a Notice of Charge to Mr Chhayakar (the “2019 Charge”)⁶ charging him with breaching Code Article 2.4.6 in that he had “*failed or*

⁵ Set out at paragraph 16.5 below.

refused (without compelling justification) to cooperate with an investigation being carried out by the ACU in relation to possible Corrupt Conduct under the Code."

4.2 On 30 October 2019 Mr Chhayakar responded to the 2019 Charge, denying the charge.⁷

4.3 On 15 April 2021, following further investigations, the ICC (on its own behalf and on behalf of CC in its position as the DACO under the CC Code for the GT20 2019) issued a further Notice of Charge to Mr Chhayakar (the "2021 Charge")⁸ charging him with breaching the Code as follows:

Charge No.1 Article 2.1.1 in that he *"attempted to contrive to fix aspects of the Zimbabwe v UAE series in April 2019, or were party to an effort to try and fix aspects of the Zimbabwe series, when you approached Qadeer Khan and offered him 60-70,000 AED to concede 70 runs in a match in the series"*

Charge No.2 Article 2.1.4 in that he *"sought to entice, induce and/or solicit Qadeer Khan to get involved in your effort to fix aspects of International Matches in the Zimbabwe v UAE series in April 2019"*

Charge No.3 Code Article 2.1.1 in that he *"attempted to contrive to fix aspects of matches in the GT20 in 2019 or were party to an effort to try and fix aspects of matches in the GT20, when you approached [Player A] and told him you could get him into a team on the basis that in 3 or 4 of the team's matches he played according to instructions"*

Charge No.4. Code Article 2.1.4 in that he *"sought to entice, induce and/or solicit [Player A] to get involved in your effort to fix aspects of matches in the GT20 event"*

Charge No.5 Article 2.4.6 in that he *"failed or refused to cooperate with an ACU investigation, without compelling justification."*

Charge No.6 Article 2.4.7 in that he *"obstructed an ongoing ACU investigation through your failure to attend an interview or interviews with the ACU".*

4.4 On 21 April 2021 Mr Chhayakar responded to the 2021 Charge, again denying all the charges.⁹

⁷ See below paragraph 9.3.

⁹ See below paragraphs 10.2. and 16.5.

5 Procedural History

- 5.1 On 13 October 2021 as a consequence of Mr Chhayakar's denial of the charges, they were referred to the Chairman of the ICC Code of Conduct Commission, Michael Beloff QC ("the Chairman") with a request that he appoint an Anti-Corruption Tribunal to determine them.
- 5.2 On 14 January 2022, the parties were advised that the Anti-Corruption Tribunal appointed to determine the charges against Mr Chhayakar would comprise Michael Beloff QC (as Chair), Annabelle Williams and Andrew Scott-Howman.
- 5.3 On 15 February 2022 Ms Sally Clark, Senior Legal Counsel for the ICC, informed the Tribunal that the ICC had sought to agree the timetable for filing the parties' written submissions with Mr Chhayakar but without success, since he had not engaged with the procedural process. Accordingly on the same date, the Chair approved the procedural timetable proposed by the ICC.
- 5.4 On 4 March 2022 in accordance with the timetable the ICC filed its opening brief which attached a witness statement of Steven Richardson ("SR"), Senior Manager ACU Operations dated 3rd March 2022 ("SRWS") Mr Chhayakar filed no Answer brief in response by the due date of 1 April 2022 ("the prescribed deadline").
- 5.5 On 6 April 2022 the ICC reminded Mr Chhayaker by email of the prescribed deadline and offered him the opportunity to file his Answer Brief by the end of 8 April 2022 notwithstanding the fact that the prescribed deadline had expired. There was, however, no response from Mr Chhayakar.
- 5.6 On 6 April 2022 SR also sent a WhatsApp message to the telephone phone number - [redacted] of Mr Chhayakar's mother (with whom the ACU had communicated previously in order to ensure that the ACU's communications were brought to Mr Chhayakar's attention). While the message was delivered and read (evidenced by the two blue ticks on the WhatsApp message) SR received no response to that message either.

- 5.7 On 11 April 2022 the ICC requested the Tribunal, in light of Mr Chhayakar's failure to file his Answer Brief, either by the initial or by the extended deadline, and his failure to engage in any way in these proceedings other than by responding to the Notices of Charge, to determine the case against Mr Chhayakar, in one of two ways, either:
1. Solely on the basis of the written submissions and evidence presented by the ICC and without a hearing; or alternatively
 2. By entry of a default judgment against Mr Chhayakar in light of his failure to file his Answer Brief.
- 5.8 Code Article 5.1.10 provides so far as material as follows "*The procedure to be followed at the hearing (including whether to convene a hearing or, alternatively, to determine the matter (or any part thereof) by way of written submissions alone) shall be at the discretion of the Chairman of the Anti-Corruption Tribunal...*". In the Tribunal's view where a charge has been denied, however briefly, it seems more consistent with due process for the Tribunal to bring its collective mind to bear on the available evidence rather than to take the short cut of a default judgment.¹⁰
- 5.9. On 13th April 2022 the Chair accordingly sent the following e mail to the parties " I write further to Ms Clark's email below,¹¹ the contents of which have been considered by the Tribunal. In response to the ICC's request, the parties are hereby advised that in my position as Chair of the Tribunal (and with the agreement of my fellow Tribunal members) and in light of Mr Chhayakar's failure to engage in this process including, in particular, his failure to submit an Answer Brief, I direct that the Tribunal will now proceed to determine the case against Mr Chhayakar solely on the basis of the written submissions and evidence presented by the ICC and without a hearing (with the proviso that the Tribunal may seek clarification on any points from the ICC should that be considered necessary as part of its deliberations). ..."
- 5.10 As appears from the foregoing, the charges against Mr Chhayakar can conveniently be classified into two categories: (1) procedural (2019 Notice of Charge and 2021 Notice

¹⁰ There is currently no express provision in the Code for entry of a default judgment though it may be subsumed within the general procedural discretion conferred on the Chairman under Article 5.1.10.

¹¹ Being the email referred to at paragraph 5.7 above.

of Charge charges No.5 and 6), and (2) substantive (2021 Notice of Charge charges no 1-4) and will be dealt with in that manner at the appropriate juncture.

6 Background

6.1 As from 2018, Mr Chhayakar was a person of interest to the ACU as they suspected him of involvement in corrupting cricket at all levels, from locally organised tournaments to International Matches (SRWS paragraphs 6-7). In particular, Mr Chhayakar and [redacted] first came to the attention of the ACU as a result of the 2018 Ajman Allstars tournament (“the 2018 AA Tournament”), which the ACU investigated and determined was a corrupt tournament. However, as the 2018 AA tournament did not constitute sanctioned or official cricket it did not fall within the jurisdiction of the ICC or of any other National Cricket Federation and therefore no action could be taken in respect of matters occurring as part of that tournament (SRWS paragraph 8).

6.2 In April 2019, the ACU became aware of allegations relating to potential fixing in the Zimbabwe v UAE series and thus commenced an investigation into such allegations. This investigation started as a result of the law enforcement agencies in Zimbabwe in that month, and in advance of the series, arresting four individuals (including Mr Chhayakar) understood to be involved in attempts to corrupt the matches (“the April 2019 detention”). Another of the arrested quartet was [Mr X], a known corrupter and someone that the ACU had previously linked to Mr Chhayakar. It is believed that [Mr X] and his group paid US \$30,000 to have the Zimbabwe v UAE series televised under a fictitious sponsorship deal with a company called Surya Pump (SRWS paragraph 9). Enquiries with [a betting operator] indicated that Mr Chhayakar had called them and enquired about placing a bet on the Zimbabwe v UAE series (SRWS paragraph 10).

7 The Charges; General

7.1 Under Code Article 3.1, the burden is on the ICC (on its own behalf and in its position as the DACO under the CC Code for the purposes of the 2019 GT20) to establish each of the elements of the charges against Mr Chhayakar to the comfortable satisfaction of the Anti-Corruption Tribunal, bearing in mind the seriousness of the particular allegation made.

- 7.2 Under Code Article 3.2.1 the Anti-Corruption Tribunal shall not be bound by rules governing the admissibility of evidence in judicial or other proceedings. Instead, facts may be established by any reliable means, including admissions and circumstantial evidence.
- 7.3 Under Code Article 3.2.3 the Anti-Corruption Tribunal may draw an inference adverse to a Participant who is asserted to have committed an offence under the Anti-Corruption Code based on his/her refusal, without compelling justification, after a request made in a reasonable time in advance of the hearing, to appear at the hearing, as directed by the Anti-Corruption Tribunal) and to answer any relevant questions.
- 7.4 The Tribunal will direct itself in accordance with the above articles purposively construed.

8 Procedural charges

Breach of Code Article 2.4.6

- 8.1 Code Article 2.4.6 makes the following an offence: *“Failing or refusing, without compelling justification, to cooperate with any investigation carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the ACU (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) as part of such investigation.”*

9 The 2019 Charge

- 9.1 From May 2019 onwards, the ACU sought to interview Mr Chhayakar in order to put various matters to him as part of their investigation, and there were numerous attempts and invitations (“the attempts”) including an offer by the ACU to travel to India in order to conduct the interview to accommodate him (SRWS paragraphs 20 to 35) and the unilateral correspondence with him (SRWS paragraph 45).

In summary:

- i) On 11 May 2019, SR sent Mr Chhayakar a message requesting that he attend a meeting with the ACU at its offices in Dubai. No substantive response was received.
- ii) On 17 June 2019, following contact from Mr Chhayakar, SR again asked Mr Chhayakar to attend a meeting with him to talk about his cricket activities. While Mr Chhayakar agreed to meet SR he stated that he was currently too busy to make a meeting and subsequently asked SR to “*stop bothering*” him.
- iii) On 1 September 2019, as SR’s attempts to schedule a meeting had proved unsuccessful, the ACU General Manager issued a Demand letter to Mr Chhayakar pursuant to Code Article 4.3, requiring Mr Chhayakar to attend an interview on 16 September 2019. After some messages interchanged between Mr Chhayakar and SR, Mr Chhayakar stated that he would “*think about*” (sic) the request.
- iv) On 15 September 2019 SR messaged Mr Chhayakar to remind him about the interview, to which Mr Chhayakar responded by informing Mr Richardson that as his UAE visit visa had expired, he was no longer in the UAE and therefore would not be able to attend. In point of fact he did not do so.
- v) On 17 September 2019, in light of his failure to attend the interview on 16 September, 2019 the ACU General Manager issued a further Demand in which Mr Chhayakar was asked to nominate a day between 2 and 6 October 2019 where he would be available in India as the ACU representatives were prepared to travel to India to conduct the interview. No response was received.

9.2 Notwithstanding all these attempts to procure his attendance, Mr Chhayakar did not attend for interview.

9.3 Mr Chhayakar’s defence, set out verbatim, is, so far as material, as follows

“... ”

Hope everyone is doing good. I would like to deny the false charges or any wrongly accusation that are put against me. And also, you people have wrongly published statements against me on numerous social media platforms which isn't true and isn't the right thing to do from your side. So kindly see my attached MRI reports for your reference and I'll be undergoing treatment in the coming week, hence will not be able to travel under any circumstances any time soon. Once I'm fully fit to travel, I'll be available to cooperate with you.

Secondly, the ACU officer is threatening me and using foul language against me and my family on phone calls and emails which is completely wrong according to the UAE laws, they don't have the rights to treat me as such without any legitimate evidence. They are misusing their powers to impose false allegations on me. Also I would like to add that i've never denied helping ACU officer but yet again they gave false statements regarding the issue.”

- 9.4 In the Tribunal’s view, that Mr Chhayakar failed to co-operate with the investigation up to the date of the 2019 Charge is clear on the face of the record. There was an investigation. He was invited to attend for interview in connection therewith. He failed to do so.
- 9.5 The issue is accordingly whether Mr Chhayakar had a compelling justification for such failure.
- 9.6 Despite Mr Chhayakar’s repeated complaints in his communications of threats and harassment by the ACU, there appears to the Tribunal to be no objective basis for those complaints. On a fair reading of the ACU’s approach, up to 15 September 2019 it was doing no more than inviting him to a formal interview, accompanied, if he wished, by a lawyer or friend and with transport provided, as it was entitled to do under the Code. Over a period of several months Mr Chhayakar prevaricated, raising issues as to the basis on which the Code applied to him, the purpose of the ACU’s investigation, problems with his house, job and parents’ health. When on 15 September 2019 SR said to him “You have been constantly avoiding us” he spoke, in the Tribunals view, no more than the truth.
- 9.7 On September 15 2019 Mr Chhayakar left the UAE for India upon expiry of his visa, apparently without warning to the ACU. His sole defence for his failure to attend for

interview thereafter and up to the date of the 2019 Charge appears to rest on his inability to travel to Dubai because he was undergoing medical treatment. The Tribunal has no reason to doubt what Mr Chhayakar says about his condition, supported as it is by the MRI reports, but this does not explain why he was not able to make himself available for interview in India as he had been expressly invited to do.

9.8 Mr Chhayakar's somewhat opaque and unparticularised observation "I've never denied helping the ACU officer" does not take his defence to this charge any further. It amounts to negative words without positive action.

9.9 As the Tribunal notes below, both before and after the 2021 Notice of Charge, Mr Chhayakar declined to engage with the ICC or ACU which, in its view, casts retrospective light on the true character of his abstinence from interview prior to the 2019 Notice of Charge - which appears to have been part of a consistent pattern to avoid an interview as would compel him to answer questions about any involvement on his part in corruption prohibited under the Code. As SR says, "As such, to date and despite numerous attempts to schedule an interview, Mr Chhayakar has not made himself available for an interview." (SRWS paragraph 44).

9.10 For all those reasons and after careful review of all the relevant correspondence, both unilateral and bilateral, the Tribunal is comfortably satisfied that Mr Chhayakar was in breach of Article 2.4.6 of the Code as alleged in that charge.

10 The 2021 Charge Charges no 5 and 6

10.1 The ICC's case is set out in SRWS paragraphs 33-44.

In summary:

- i) On 20 October 2019, following the issuing of the First Charge, Mr Chhayakar was sent a further Demand letter in which he was advised that he was required to attend an interview with the ACU at its offices on 4 November 2019. He failed to respond to this request, and no acknowledgment of receipt was sent.
- ii) On 21 October 2019, in order to ensure that he had received the Demand letter, the ACU sent a WhatsApp message to Mr Chhayakar's mother to advise her

that a letter had been sent for his attention. While no response was received to this message, the message itself was read at 20.44 on 21 October 2019 (evidenced by the two blue ticks on the WhatsApp message).

- iii) On 1 November 2019 Mr Chhayakar responded to the further Demand letter, by e-mail, in which he stated that he was receiving medical treatment and therefore was “not allowed” to travel.
- iv) On 4 November 2019, the ACU responded and advised Mr Chhayakar that representatives could come to India and interview him there so that he did not need to travel. He said “I am assuming you are in India, please tell us which city you are in and we will make suitable arrangements for a private and discreet place for the interview to be conducted. The purpose of the interview is to hear your account of allegations that we will put to you directly when we speak, as previously stated you may have a lawyer or friend present at the interview at your own arrangement and expense”. A proposed date of 18 November 2019 was included in this response. Again, no response was received from Mr Chhayakar to what the Tribunal considers a wholly reasonable request.
- v) On 10 February 2020, in a final attempt to try and interview Mr Chhayakar and put the various allegations to him, a further Demand letter was sent to him (actually dated 27 January 2020) requiring him to attend an interview with the ACU on 24 February 2020.
- vi) On the same day, a WhatsApp message was sent to his mother advising her that a letter had been sent for his attention. While this WhatsApp message showed that it had been read, no response was received from either Mr Chhayakar or his mother.
- vii) On 24 February 2020 Mr Chhayakar did not attend the interview scheduled for that day.

10.2 Mr Chhayakar’s defence to the charges set out verbatim is, so far as material, as follows

“Explanation & Clarification to the Notice of Disciplinary Charges

.....

In Reference to the above subject and an email sent to me on the 15th April 2021, regarding the disciplinary charges.

Please find mentioned below my statement which clarifies my position.

1.12.1 - The demand letter was received on 21st October 2019, Not on 18th October 2019. And it was fairly responded on 01st November 2019 at 11:31 AM and it was acknowledged by Steve.

1.12.2 - The demand letter mentioned here was already replied and acknowledged. Refer to 1.12.1

1.12.3 - The email was replied on 30th October 2019 instead of 01st November (mentioned in the letter) , in regards to Notice of next day 31st October at 09:34 AM.

1.12.4 - The last response i've received on the demand letter acknowledged by Steve was 'Thank you for responding. We will be in touch in due course.' On 1st November 2019 at 13:06. No further response was received.

1.12.5 - The further demand letter sent on 10th February 2020, was never received by me as I was out of the country during that period from 09th February until 10th March.

The allegations put against me by ACU which says I have not been responding to their letters or refused, failed to cooperate is totally false.

....

Charge No.5 & Charge No.6

As stated above in the beginning in 1.12.1 until 1.12.5, there was no refusal at any stage or obstruction of any sort. The ACU as well aware of my current visa status in the country and were kept informed about everything at every given point when contacted.

Till date I am available to cooperate in any situation and I am also available for any kind interview if required.....

I hereby humbly request ACU to call me once again for an interview to waive off all the baseless charges upon me and clear me from all the accusations.

Looking forward for a positive response regarding the above.

.....Note - In the span of 2 years I was contacted through emails 3 times and I had replied to those emails as well. I had clearly mentioned if being in the country available I am always for face to face interview. Copies of the email can furnished upon request."

10.3 The Tribunal is not concerned with peripheral issues as to precisely when particular communications were sent or received (Mr Chhayakar's points 1.12.1 to 1.12.4). The central issue is whether, as he asserts at Point 1.12.6, he never received the further demand letter sent on 10 February 2020, because he was out of the country during the period from 09 February until 10 March. Even on the premise that he was not in the UAE on the 10 February 2020, he provides no rebuttal of the fact that the WhatsApp message advising his mother of the letter was received, and no explanation why, if so, that message did not reach him.

10.4 Nonetheless, taking Mr Chhayakar at his word that that he was available for interview, the ACU continued to try and arrange an interview with him. As described in SRWS paragraphs 42-43, these attempts again proved unsuccessful.

In summary:

- i) On 6 May 2021, SR sent an email to Mr Chhayakar inviting him for an interview at the ICC's offices on 20 May 2021. A WhatsApp message was also sent to his mother from the ACU's Hotline phone number advising her that an email had been sent to him. No response was received.
- ii) As a result, on 17 May 2021 SR sent a further email to Mr Chhayakar in which SR informed him that because the ACU had not received a response from him, the ACU had revised the date for the proposed interview to 24 June 2021.
- iii) On 20 June 2021, as SR had received no response from Mr Chhayakar, he sent a further email to Mr Chhayakar requesting confirmation from him that he would be attending the planned interview on 24 June 2021. While SR received a delivery receipt for this email, SR did not receive any response from Mr Chhayakar.

- iv) On 24 June 2021, the day of the planned interview, Mr Chhayakar did not attend the ICC's offices. As such, SR sent a final email to Mr Chhayakar reminding him that the interview had been scheduled for that day and requesting that he provide an explanation for why he had failed to attend. Again, SR received a delivery receipt for this message but no response from Mr Chhayakar.
- v) Alongside SR's email, a WhatsApp message was also sent from the ACU Hotline phone number to Mr Chhayakar's mother's phone number pointing out that Mr Chhayakar had been due for an interview that day but had failed to attend. Once again, SR received no response.

10.5 In the Tribunal's view, that Mr Chhayakar failed to co-operate with the investigation to the date of the 2021 Charge is also clear on the face of the record. There was an investigation. He was invited on several occasions to attend for interview in connection therewith. He failed to do so. The issue is, again, accordingly whether he had a compelling justification.

10.6 The Tribunal repeats, mutatis mutandis, its conclusion as set out in paragraphs 9.9 - 9.10 above. In light of the entire history, both before and after the 2021 Charge and after careful review of the relevant correspondence, the Tribunal is comfortably satisfied that Mr Chhayakar was in breach of Article 2.4.6 of the Code as alleged in that charge.

11 Breach of Code Article 2.4.7

11.1 Code Article 2.4.7 makes, so far as material the following an offence: "*Obstructing or delaying any investigation that may be carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant)*".

11.2 The evidence relied on by the ICC in support of this charge is set out above in relation to the breach of Code Article 2.4.6, which the Tribunal has already accepted, at paragraphs 9.9, 9.10 and 10.6. The two charges inherently overlap but are not identical.

- 11.3 The Tribunal also accepts that in addition to amounting to a failure to cooperate, Mr Chhayakar's actions in failing to attend an interview necessarily obstructed and/or delayed the ACU's investigation, as the ACU was unable to put key facts and matters to him for his explanation and comment.
- 11.4 As SR cogently says: "The ICC has therefore not been able to put any of the allegations about him to him for his explanation. Further, Mr Chhayakar has not provided any information requested by way of the Demands issued to him, therefore, possibly preventing the ICC from obtaining information relevant to its investigation" SRWS paragraph 44. (The Tribunal would interpret and adopt use of the word "possibly" as referring the lack of certainty about the existence of such information which, ex hypothesi, cannot be ascertained rather than to the degree of likelihood that Mr Chhayakar's action or inaction prevented the ICC from obtaining any, if any, such information, which is obvious.)
- 11.5 In point of law, while the requests for Mr Chhayakar to attend ACU interviews occurred when he was no longer a Participant under the Code, by virtue of Code Article 1.9,¹² he remained bound to comply with the Code even after he was no longer a Participant in respect of the investigation, prosecution and adjudication of matters taking place prior to the date he no longer fell within the definition of a Participant.
- 11.6 In point of fact, as appears from the record, the ACU sought to interview him in respect of his involvement in matters which occurred while he was a Participant, namely in relation to (i) the approach to Mr Qadeer prior to the April 2019 Zimbabwe v UAE series, (ii) the alleged approach to Mr Shabbir, via Mr Qadeer, in advance of the UAE v Nepal series in January 2019 and (iii) the approach to [Player A] regarding the 2019 GT20.

12 SUBSTANTIVE CHARGES

¹²"Each Participant shall continue to be bound by and required to comply with the Anti-Corruption Code until he/she no longer qualifies as a Participant (the "End Date"). Notwithstanding the foregoing, the ICC shall continue to have jurisdiction over him/her under the Anti-Corruption Code after the End Date in respect of matters taking place prior to the End Date; and he/she shall continue to be bound by and required to comply with this Anti-Corruption Code after the End Date with respect to the investigation, prosecution and adjudication of such matters."

Breach of Code Article 2.1.1 and 2.1.4

12.1 The Code Articles 2.1.1 and 2.1.4 provide, materially, as follows:

2.1.1 - Fixing or contriving in any way or otherwise influencing improperly, or being a party to any agreement or effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match, including (without limitation) by deliberately underperforming therein.

2.1.4 - Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article.

2.5.1 - Any attempt by a Participant.....to act in a manner that would culminate in the commission of an offence under the Anti-Corruption Code, shall be treated as if an offence had been committed, whether or not such attempt.....in fact resulted in such offence.

13 The Approach to Mr Qadeer

13.1 On 6 October 2019, as is detailed in SR WS, paragraphs 15 to 16, Qadeer Khan, a UAE player, was interviewed by the ACU as part of an investigation into the activities of some members of the UAE team. When interviewed, Mr Qadeer was served with a Demand to hand over his phone, which he did. During this initial interview, he denied any involvement in corruption. However, he confirmed that he knew Mr Chhayakar through Mr Chhayakar's involvement in local cricket in the UAE and he knew both him ("a good friend") and his family¹³.

13.2 On 9 October 2019 following an initial examination of Mr Qadeer's phone, which identified contacts of interest in the investigation, Mr Qadeer was interviewed again. During this interview, he stated the following:

¹³ At pages 16-17 of Mr Qadeer's first interview 6 October 2019.

- i) In advance of the UAE's tour of Zimbabwe in April 2019, Mr Chhayakar had offered him 60-70,000 AED (approx. US\$16-19,000) to concede 70 runs in a match (the first or second match) through "bad bowling". In particular, about 7 to 10 days before he left for the Zimbabwe tour, Mr Chhayakar approached him at his home.¹⁴
- ii) He did not agree to the proposed fix.¹⁵
- iii) He accepted that he continued communicating with Mr Chhayakar and [Mr X] after the offer was made, because he thought they might get him a place to play in cricket tournaments.¹⁶
- iv) When he was shown a series of WhatsApp messages that were recovered from his phone between him and Mr Chhayakar in August 2019, he admitted that the conversations had taken place and that in those conversations Mr Chhayakar

¹⁴ At pages 17-18 of Mr Qadeer's second interview -9 October 2019. "QADEER AHMED: He approached me. ANDREW EPHGRAVE: You're saying Gary, Mehar Chhayakar has approached you? QADEER AHMED: Yeah. ANDREW EPHGRAVE: Okay. QADEER AHMED: That's what I am saying. ANDREW EPHGRAVE: When did he approach you? QADEER AHMED: He approached me for the Zimbabwe series. ANDREW EPHGRAVE: And what did he say to you? QADEER AHMED: He said for the first match and for the second match. ANDREW EPHGRAVE: To do what? QADEER AHMED: To do like, he said to do the bad bowling bad bowling. ANDREW EPHGRAVE: Bad bowling QADEER AHMED: Yeah. ANDREW EPHGRAVE: And what did you - what did they expect you to do? QADEER AHMED: Sorry? Like 10 in an over, like at the end of the matches, would be 70 or 80 runs. ANDREW EPHGRAVE: So, 70 or 80 runs because of your poor bowling stats. QADEER AHMED: Sorry? ANDREW EPHGRAVE: Because of your poor bowling. QADEER AHMED: Yeah, they want me to give 70 or 80 in my spell. ANDREW EPHGRAVE: 70 or 80 runs in your spell and what would you have got in return for that? QADEER AHMED: They offered me money. ANDREW EPHGRAVE: How much did they offer you? QADEER AHMED: They offered me like 60 or 70,000 dirhams. ANDREW EPHGRAVE: 60 or 70,000 dirhams. And how would they pay you that? QADEER AHMED: They said they will pay whenever I want, like [INDISCERNIBLE 00:34:29] in what I explained in the - in [INDISCERNIBLE 00:34:33] conditions like where I want, how I want. ANDREW EPHGRAVE: Okay and did you take any money from them? QADEER AHMED: No. ANDREW EPHGRAVE: When, where were you when they made this offer to you? QADEER AHMED: Where? ANDREW EPHGRAVE: How did they - how did they make this offer? QADEER AHMED: They came to Abu Hail area. ANDREW EPHGRAVE: And so they came to where you live? QADEER AHMED: Yeah. ANDREW EPHGRAVE: When was that? QADEER AHMED: I don't remember the dates. ANDREW EPHGRAVE: Okay. STEPHANIE MCCORMICK: So, you said it was before the Zim series? QADEER AHMED: Before the Zim series. STEPHANIE MCCORMICK: Okay, so when was that Zim series, in April? ANDREW EPHGRAVE: Yeah, it was in April. STEPHANIE MCCORMICK: Sorry. So are we talking six months before that, are we talking a week before you flew, two weeks, QADEER AHMED: Before 10 days STEPHANIE MCCORMICK: 15 days before you flew... QADEER AHMED: May be 15 days"

¹⁵ See page 21- 22 of Mr Qadeer's second interview.

¹⁶ See page 55 of Mr Qadeer's second interview "I told you. I gave you the answer that it is -- or you can say that I'm just guilty in that sense you can say that I'm just -- want to be a part of a T-20 league or a T-10 league. So that is why I just keep contact with them. That's it."

was seeking inside information from him, namely if he was playing in a certain match and if so which overs he would be bowling¹⁷.

- 13.3 When asked to explain some of the messages between him and Mr Chhayakar, when Mr Chhayakar asked to meet him around the times he was selected to play in matches, Mr Qadeer says that he cannot remember what was discussed in those meetings¹⁸. In some of these messages, Mr Qadeer and Mr Chhayakar refer to “work” being done in matches - which we are told is how corrupters commonly refer to fixes.
- 13.4 On the basis of the information provided in his interview, Mr Qadeer was charged by the ICC with various breaches of the Code, including that he failed to report approaches he received from Mr Chhayakar to engage in corrupt conduct.
- 13.5 On 14 April 2021, Mr Qadeer admitted the charges and entered into an Agreed Sanction of a period of five (5) years ineligibility with the ICC.

14 The Approaches to Gulam Shabbir

- 14.1 Gulam Shabbir is a 35-year old former UAE international cricketer who was part of the UAE squad for the 2019 ICC World T20 Qualifiers (the “Qualifiers”). He played 23 ODIs and 17 T20s for the UAE with his last appearance for the UAE being on 18 October 2019 during the Qualifiers.
- 14.2 As is described in SRWS paragraphs 13-14, mid-way through the Qualifiers, Mr Shabbir, without prior warning, resigned his position with the UAE team, retired from cricket, in both cases with immediate effect, and left the UAE to return to Pakistan.
- 14.3 Mr Shabbir’s departure from the UAE and resignation from the UAE team mid-way through the tournament excited the ACU’s suspicions, since resignation occurred at

¹⁷ At pages 41-42 of Mr Qadeer’s second interview.

¹⁸ See page 24 of Mr Qadeer’s second interview “I am not denying it, but the thing is that if I don’t remember – the thing I remember I told you. If I don’t remember then how can I tell you that, oh he came in and he said – even I don’t remember what matches I played in December.”

about the same time as a number of UAE players were being summoned for interview by the ACU in relation to their investigation into members of the UAE team.¹⁹

14.4 On 4 November 2019, Mr Shabbir was in consequence interviewed by ACU representatives in Pakistan.

14.5 In this interview, Mr Shabbir disclosed the following information relating to Mr Chhayakar:

i) When asked whether he had ever been approached to fix matches, or aspects of matches, Mr Shabbir said that he had, and that it was Mr Chhayakar who had approached him²⁰.

After being shown a photograph of Mr Chhayakar, he confirmed that Mr Chhayakar was the person who had approached him²¹.

ii) He described Mr Chhayakar as a friend of his teammate Qadeer Khan, and he knew him because Mr Chhayakar used to organise tournaments in which Mr Shabbir had played.²²

iii) In particular, he said that about a year prior to the interview, Mr Chhayakar had told Mr Shabbir that he would have to be bowled out for less than 14 runs. He said that this conversation took place while Mr Chhayakar was with Mr Qadeer, although Mr Shabbir did not identify any specific match to which this approach related²³.

¹⁹ It was this investigation which led to the ICC charging Mr Chhayakar, Muhammed Naveed, Shaiman Anwar Butt and Qadeer Khan with breaches of the Code.

²⁰ See page 17 of Mr Shabbir's first interview 4 November 2019. "[HR] So you were approached? Were you asked to fix? [GS] Yes. ... [HR] Okay and tell me about that. Who approached you and what were you asked to do? [GS] Gary had approached me. That Mehar Chhayakar. I think same name. I don't know his correct name. He is known as Gary. He was with us in Dubai in 2012."

²¹ See page 17 of Mr Shabbir's first interview –: "[HR] If I show you a photograph, Mehar Chhayakar. ... is that, that the person? [GS] Yeah, that's per..."

²² See pages 17-18 of Mr Shabbir's first interview "[GS] He was a friend of Qadeer. He was a close friend of Qadeer. ... Three-four. ... I am also his friend. It's not that I don't know him. ... Yes, because since 2012-13, since I have gone to Dubai, he used to conduct tournaments. I know him. ... So, I know him. Because when there used to be club matches, he used to sometimes be the scorer, sometimes he used to conduct the matches. So, I know him."

²³ See pages 19-22 of Mr Shabbir's first interview "... when I spoke with him, he had jokingly said the same thing to me, now I understand it. Because, I'm from a village and secondly, I'm not very educated. So, I

- iv) When asked about the UAE series against Nepal in January 2019, Mr Shabbir said that when the Nepal tour took place, Mr Chhayakar and [Mr X] tried to approach him through Mr Qadeer, but he did not meet them²⁴. He also said that, prior to the series, Mr Qadeer told him that the people organising the Nepal series (namely Mr Chhayakar and [Mr X]) wanted to meet him for fixing²⁵.
- v) Mr Shabbir said that, following a request from Mr Qadeer, he told Mr Qadeer that he could pass his number on to someone who was involved in fixing matches and that he, Mr Shabbir, subsequently received a number of calls from Mr Chhayakar and [Mr X]. However, he stated that he ignored these calls²⁶. He explained that his perception was that Mr Chhayakar and [Mr X] were calling

understand these things a little late. ... Yes, he jokingly told me twice just like that. ... He had said that you need to get dismissed/out under 14 runs, you may play as many balls as you wish. [HR] and when did he ask you to do that? In what match did he ask you to do that? ... [GS] no, not during matches. He used to come to meet Qadeer sometimes. So, I used to talk to my wife and while talking I used to go to Qadeer's room. Qadeer and I used to live together. So, sometimes it used to happen that while talking over the phone, I used to come to Qadeer's room. So, he used to be with Qadeer. Sometimes they used to stand under the building, so I used to come to know Gary is also there. So these two were very close friends. So, I also used to talk to him sometimes. So he used to say to me in Punjabi that brighter, you should also earn something. Are you going to stay like this only. Buy a car, buy a house. ... [HR] and when did this happen? ... [GS] it was in the winter ... last year ... one year. ... You can say one year ago. [HR] and had he asked you before then? ... [GS] no. [HR] 'Cause you said you've known him since about 2012, 2013. [GS] now, I thought he was joking. I didn't know that these people did such things. Because I came to know when there were there in Zimbabwe and Qadeer went to meet them."

²⁴ See pages 86-89 of Mr Shabbir's first interview "[CA] Okay, tell me one more thing, what was spoken about Nepal? About the Nepal matches? ... [GS] Team Nepal had come there, they had tried to approach, but I didn't meet them." Pages 87-88: "[CA] Then Qadeer told you, about them. That they want to meet you ... He says that they wanted to call me, they kept on calling me – [Mr X] and Gary during those, before those matches. [HR] This is for the Nepal match? [CA] But I did not pick their phone." Page 89: "That's why they wanted to meet me-they wanted to meet me because, if I had a talk, then they would have spoken to me directly. Because that guy wanted to meet me directly. Because now I have seen his face, his name is [Mr X], the guy who wanted to meet me directly."

²⁵ See pages 100-101 of Mr Shabbir's first interview "[CA] Before the beginning of the Nepal series, when did they tell you to do corruption? ... [GS] I don't remember the exact time, but I got to know it through Qadeer that Nepal series is taking place. I got to know from Qadeer, he told me about it. I remember it now as you have asked me. I knew they were organising a series in Nepal. It is their right, so these people want to meet you. [CA] He says that before the Nepal series, Qadeer told me that these are the people who are organizing Nepal series. [HR] Okay. [CA] And they want to meet you for corruption... [HR] Okay, and did you meet them? [GS] No. I don't meet them."

²⁶ See pages 86-87 of Mr Shabbir's first interview "[CA] Okay, tell me one more thing, what was spoken about Nepal? About the Nepal matches? ... [GS] Team Nepal had come there, they had tried to approach, but I didn't meet them." Pages 87-88: "[CA] Then Qadeer told you, about them. That they want to meet you ... He says that they wanted to call me, they kept on calling me – [Mr X] and Gary during those, before those matches. [HR] This is for the Nepal match? [CA] But I did not pick their phone."

him to make an approach about fixing in the Nepal series²⁷. In particular, he said that Mr Qadeer told him that Mr Chhayakar and [Mr X] wanted to contact him about fixing²⁸.

- vi) Mr Shabbir ultimately did speak to Mr Chhayakar who told him that the first match in the series was fixed and the UAE had to lose that match and how that would happen, although he did not explain when that conversation took place or provide any further details.²⁹
- vii) Mr Shabbir also explained that he got to know Mr Chhayakar a bit better during the UAE's tour of Zimbabwe in April 2019 as Mr Chhayakar was in Zimbabwe. In particular, he said that when the team was in Zimbabwe, Mr Qadeer had gone to see some people, who Mr Qadeer later told him were Mr Chhayakar and his associate [Mr X].³⁰
- viii) Mr Shabbir said that during the Zimbabwe tour, Mr Chhayakar and [Mr X] were offering any player who wanted to make some money to corrupt a match during the tour³¹. He explained that the offer came to him via Mr Qadeer, with

²⁷ See Page 89 of Mr Shabbir's first interview "That's why they wanted to meet me-they wanted to meet me because, if I had a talk, then they would have spoken to me directly. Because that guy wanted to meet me directly. Because now I have seen his face, his name is [Mr X], the guy who wanted to meet me directly."

²⁸ See page 100 of Mr Shabbir's first interview "[CA]. Did Kabir tell you that [Mr X] and Gary want to do fixing? ... [GS] Yes."

²⁹ See page 90-91 of Mr Shabbir's first interview "[CA] Was there any talk with Gary about Nepal, did Gary tell you anything? What was happening when the team was coming from Nepal? Don't talk about usual things, tell me clearly what happened. [GS] When the team came to Nepal, Gary gave me the details, that the match is fixed., or about the 1st match, that we have to lose it, and how to do that. And who will do what, what in that."

³⁰ See pages 22-25 of Mr Shabbir's first interview "[HR] can you tell me about what happened in Zimbabwe? ... Qadeer went to see some people in Zimbabwe. Tell me ... Tell me what happened in Zimbabwe ... [GS] I came to know that Qadeer had gone to meet them, because I didn't know that they were there. ... Yes, that's what I'm telling you. I didn't know at that time that he was there. Qadeer told me that he had met them. There was Gary, and someone called [Mr X], so these were their names. ... [CA] they were trying to contact me on the phone ... In Zimbabwe, Qadeer told me that he had met Gary and [Mr X]. That they have come to Zimbabwe for the matches. I think some Surya pumps, I think they were the sponsors and they were asking for players and saying that whoever wants money can take it from them. ... [CA] ... that by corrupting the match ... [HR] And by Zimbabwe, we're talking about April 2019, the ODIs? [GS] Yeah, four matches. Yeah. ..."

³¹ See pages 25-27 of Mr Shabbir's first interview "[HR] and what were they, what were Gary and [Mr X] asking to be done in the matches for money? What would ... What did they want? ... [GS] I couldn't talk much with Qadeer. Because there was one thing. They had offered me through Qadeer. There also. Qadeer said that you also do it. I said to Qadeer that I cannot do this thing. I won't be able to do it. ... [HR] okay."

Mr Qadeer telling him that he would have to give away 12 runs an over, or be bowled out for less than 14 runs in the second match of the series³².

- ix) Mr Shabbir said that neither he nor Mr Qadeer accepted the offer, eventually saying that Mr Qadeer had been offered AED 70,000 to carry out the fix but, as he himself had not agreed to be involved 'he was not offered any specific amount of money'³³.

14.6 On 23 April 2020 Mr Shabbir was interviewed by the ACU for a second time. In summary, in this interview Mr Shabbir reiterated his earlier position – namely, that he was the subject of an approach from Mr Qadeer on behalf of Mr Chhayakar and [Mr X] in relation to the Zimbabwe series³⁴, an approach he rejected, and that he received a similar approach in respect of the Nepal series but he did not meet either Mr Chhayakar or [Mr X] in that regard, and he could not recall the specifics of the actual approach³⁵.

14.7 On the basis of the information he provided to the ACU in his interviews, Mr Shabbir was charged by the ICC with breaches of the Code, including that he failed to report approaches he had received from Mr Chhayakar to engage in corrupt conduct.

³² See page 26 of Mr Shabbir's first interview "they said to me, as per the talks that I had with him, he said that Shabbir, let's do this together. They have asked me to score twelve runs in an over. And I will make it happen for you also. So, this must be the same, right? What I am understanding now, what Gary had said to me. It must be the same that I have to dismissed/out under fourteen runs. Or... Qadeer. ... I think it was the second match ... [HR] Okay. And did you accept, did you agree to do it? [GS] No ... [HR] Just one minute, okay, so he ... this is a man who has asked via Qadeer for you to fix a match, okay? [GS] Okay. [HR] And you're saying to me that you didn't do it because of bad money being unlawful, okay? So that suggests to me that you did take it seriously, okay? Okay? So you knew in Zimbabwe that he was somebody who was seeking to corrupt cricket matches. Is that fair? [GS] no, I don't doubt that."

Page 27 of Mr Shabbir's first interview "[CA] In which match did his ask you to do this? [GS] I cannot recall now. I think it was the second match. I think it was the second match."

³³ See pages 33 of Shabbir's first interview "So Qadeer said to me that I am doing it, you also do it. So, I had no, why to earn the unlawful money?" Pages 36-37 "He told me about himself that he would get seventy thousand Dirham, **I think**, if I am right. He told me about seventy thousand Dirham that he will get seventy thousand Dirhams ... We did not speak about the amount. He did not tell.."

³⁴ See page 38 of Shabbir's second interview 23 April 2020 "... the Zimbabwe one, an approach was made to me, and Kabir [the name is Qadir in audio file] had told me and I had said no, Kabir [the name is Qadir in audio file], let's not do it because we have to account for it in front of Allah, so we will not indulge in this endeavour. So we were approached in Zimbabwe and we said no to it."

³⁵ See pages 38 of Shabbir's second interview "They had come to meet me in Nepal, but I did not meet with them but they did approach me. But I cannot talk much about this because Kabir [the name is Qadir in audio file] and I were very close. ... [CA] he says that basically there were two during the Nepal, it was not a direct approach made to me but it was through Kadir, but I don't exactly remember that approach and recall that approach."

14.8 On 21 August 2021, Mr Shabbir admitted the charges and entered into an Agreed Sanction with the ICC of a four (4) year period of ineligibility in respect of the breaches.

15 Approach to [Player A]

15.1 In October 2019, following an ACU education session at the 2019 ICC WT20 Qualifiers, [Associate Member] player [Player A] contacted the ACU to report an approach that he had received some time before but, until he received the education, did not realise he had to report.

15.2 On 24 October 2019 following his report, [Player A] was interviewed by the ACU. During this interview, [Player A] provided the following information

- i) In June 2018³⁶, he received a message on WhatsApp from a number he did not know. The sender identified himself as “Mehtar from college” which [Player A] said he understood to be Mr Chhayakar as they had both studied together in Dubai and played cricket against each other for their colleges³⁷.
- ii) Through this WhatsApp conversation, the sender (ie Mr Chhayakar) asked [Player A] on a number of different occasions to speak to him on the phone, however, [Player A] resisted and tried to communicate just via messages and voice notes³⁸³⁹.
- iii) The conversations progressed with Mr Chhayakar asking [Player A] whether he would be interested in playing in the GT20 in Canada, as one of his uncles had a franchise in the tournament.⁴⁰

³⁶ Note the transcript refers to this as 2018 however this took place in 2019. The screenshots of the messages between [Player A] and MC show that they took place on Tuesday, June 18. In 2019, 18 June was a Tuesday therefore this confirms that these conversations took place in 2019.

³⁷ See paragraph 3 of [Player A's] WS 10 February 2022 and page 5 of [Player A's] interview 24 October 2019-. *“Year it was in June, maybe, June '18 or something, some date was there, and then it was in the afternoon when he called, when he messaged me, this guy he messaged me on WhatsApp. ... And he said, hi, brother, so didn't have his number. And said yes, who's there? So he said [PH 00:06:14] Mehtar over here from UAE. And I said yeah - no, he used to study with me over here in Dubai ... He was among my college friends.”*

³⁸ At paragraph 4 of [Player A's] WS and pages 5-6 of [Player A's] interview.

³⁹ See the screenshots of the messages from Mr Chhayakar to [Player A].

⁴⁰ At paragraphs 6-8 of [Player A's] WS.

- iv) Eventually, [Player A] agreed to a voice call with Mr Chhayakar. During this call, Mr Chhayakar told [Player A] that with the assistance of his uncle he could arrange for him to play in the tournament, and if so, he could play maybe 9 matches which, in 4 or 5 of them, he could score as many runs as possible but in 3 or 4 of them he would have to play according to instructions⁴¹. [Player A] said there was mention of earning money for this, but no actual sums were discussed⁴².
- v) [Player A] said he immediately rejected the offer, saying he had never done such a thing and he was not interested. He said that he immediately understood that Mr Chhayakar was asking him to be involved in fixing matches⁴³.

16 The Substantive Charges; Analysis

16.1 The Tribunal is conscious of the fact that Mr Chhayakar does not appear to have had at any time the benefit of legal representation or advice in connection with the matters of which he was charged; or to have addressed them other than in the barest outline. Although, in the Tribunal's view, to that latter extent, Mr Chhayakar is the author of his own misfortune. The Tribunal has considered it imperative to analyse for itself the consistency and cogency of the ICC case and to be astute to differentiate between those matters which may: (a) whether rightly or wrongly, have excited the ICC's suspicion

⁴¹ See paragraphs 8-11 of [Player A's] WS and pages 6-7 of [Player A's] interview "... So after some time, he said that year, what about GT20? He said one of my uncles in Canada, he's having the franchise. Now I don't remember which team he said. ... He said he's having a franchise over there and he wants you to play for them. ... He said yeah, that's really good if you get me over there, because it's a big stage and well, all the matches are live and I'm on good national players you can, he said and one more league is there European league also. He can help you with that also. We had a chat. We had a call, conversation for two to three minutes. So after two, three minutes, he starting saying you know what is going in cricket and all and all so I got alarmed that something is wrong maybe, so I said brother, be straightforward. What you want to say? Be straightforward. So he said yeah, I think you know that now, we, you have to go there and the first few minutes, you have to play by whatever they say ... like if you have to get out, they say you have to get out, you have to get out. You don't have to get runs. ... other than that, maybe, I don't know, I'm not sure. He said maybe nine matches you will get to play, eight or nine matches. So other than that, four to five matches you go, whatever runs you want, you can get, that's fine, up to you. But three matches or four matches, you'll have to play according to you." See also page 14: "Two three matches you will have to, whatever they say. Maybe you have to get runs. It maybe you have to get out or maybe something, he said mostly they will ask you to get out soon for the three matches, and then other matches its up to your performance, whatever you perform."

⁴² See page 13 of [Player A's] interview "... he said you will get a good amount for, he never said a fixed amount. ... but he said you will get a good amount for this. And yeah, that's it. But he never told me specific amount, he never said a specific amount."

⁴³ At paragraph 12 of [Player A's] WS and page 7 of [Player A's] interview "So as soon as he said this, I said you have called the wrong person. I am not, totally not interested in such way."

of his involvement in corrupt conduct contrary to the Code⁴⁴ and; (b) if proven to the proper standard, establish actual breaches thereof, and for similar reasons to ignore matters described by ICC as mere background⁴⁵ which equally do not qualify as evidence and matters which by contrast cross the evidential threshold.

- 16.2 In particular the ICC correctly accepts that at the time these requests for inside information by Mr Qadeer were made i.e. August 2019, Mr Chhayakar no longer constituted a Participant for the purposes of the Code. Mr Chhayakar was therefore not charged in respect of these requests. It refers to them not only as background (which would be immaterial) but as evidence of Mr Chhayakar's propensity to engage in corrupt conduct (which would by contrast be material).
- 16.3 Mr Shabbir also described how he received AED 7,500 from Mr Chhayakar, via Mr Chhayakar's mother's account about 4 months prior to the interview⁴⁶. He was not, however, clear in his description of how or why he received this money. Mr Shabbir said that he knew Mr Chhayakar's mother and had asked her for a loan because he had debts in the region of AED 35,000. However, despite describing this as a loan, he said that he had not repaid the money. Mr Shabbir did not, however, directly link this money with a corrupt approach from Mr Chhayakar and the ACU has not identified any other evidence which could support a claim that this amount was connected to any corrupt conduct. The Tribunal therefore discount this episode too, whatever its actual nature, in its analysis of the charges.
- 16.4 The Tribunal notes that the evidence against Mr Chhayakar is cumulative. There is, in its view, no basis for assuming, still less concluding, that the trio whose evidence is relied on by the ICC to inculcate him was animated by any improper motive. Had there been such, the evidence would have been more polished than it was; and not interspersed with admissions of inability to recollect dates or other detail of which

⁴⁴ See e.g. paragraphs 6.1 and 6.2 above.

⁴⁵ See eg paragraph 16.2 below.

⁴⁶ See page 105 of Mr Shabbir's first interview "... [CA] He said that I requested his mother, Gary's mother, to... that I need money, so then Gary called me and told me that okay, if you have money, I will give it to you... Then his... he transferred that money from his mother's account to his account." And page 107: "[CA] He said, because I knew her, she used to come to grounds when they organized matches. So I knew her, so I requested her for money because my family was coming, I required money. So then she told Gary, and Gary called me and said you asked my mother for money, so I'll send it to you. So from her account it was sent."

there are profuse indications in the extracts from interviews cited at paragraphs 13-15 above. There is no suggestion, nor does Mr Chhayakar make any allegation, that their statements were made in consideration, or even expectation, of mitigating the sanctions imposed on them for their own admitted breaches. Nor is there any indication of coercion in the interviews carried out with them. Rather the fact that Mr Qadeer and Mr Shabbir accepted sanctions for corrupt conduct to which they assert Mr Chhayakar was a party speaks volumes against Mr Chhayakar's innocence.

16.5 Mr Chhayakar's defence set out verbatim was as follows:

"Charge No.1 - As stated in the Notice of Charge sent on 15th April 2021.

There was no approach made to Qadeer Khan with any such financial amount mentioned as above. Just to clarify, the only financial dealing between him and myself on the said date was for the purchase of Adidas Blue/Red Cricket Shoes which he had given and order.

As I was not the resident of UAE from October 2015 until 2020 I had been visiting UAE on visit visas only, my passport is evidence to the same as well as furnished my visit visa copies if required.

If I had such a big amount to offer him I would definitely had fixed my legal status in the country and would have earned decent living

Charge No.2 - UAE/Zimbabwe Series

The above charge is a mere baseless accusation I should not be held responsible of any such charge of corruption. Being a cricketer I do know the pro's and con's as per the ICC regulations. Henceforth i had never asked Qadeer Khan to corrupt any of the said matches neither did I pursued him to do so.

Charge No.3 & Charge No. 4 - GT20

The above charge is a mere baseless accusation I should not be held responsible of any such charge of corruption. Being a cricketer I do know the pro's and con's as per the ICC regulations. Henceforth i had never asked [Player A] to corrupt any of the said matches neither did I pursued him to do so."

- 16.6 The Tribunal finds these defences unpersuasive. Save in respect of Charge No.1 they amount to nothing more than bare denials. That Mr Chhayakar knew of his obligations under the Code is not the same as proving that he did not breach them.
- 16.7 As to Charge No.1 Mr Chhayakar provides no documentation to substantiate his description of the true nature of any financial dealings between Mr Qadeer and himself on the relevant date, nor is his explanation of why he would have needed to be in the UAE, with a fixed status, in order to engage in the corruption with which he is charged under this head, in any way convincing.
- 16.8 The Tribunal indeed considers it is entitled in all the circumstances set out above to draw an adverse inference from Mr Chhayakar's apparent reluctance to engage in any real detail with the charges to which, if he had a viable defence, would be easy to advance.
- 16.9 The Tribunal accordingly accepts that, based on the evidence summarised at paragraphs 13 to 15 above, the ICC has proved to the standard of comfortable satisfaction that Mr Chhayakar breached Code Article 2.1.1 on the following separate occasions:
- i) Mr Chhayakar attempted to contrive to fix aspects of the Zimbabwe v UAE series in April 2019, or was party to an effort to try and fix aspects of the Zimbabwe series, (when in April 2019 he approached Qadeer Khan and offered him AED 60-70,000 to concede 70 runs in a match in the series and, via Mr Qadeer, approached Mr Shabbir).
 - ii) Mr Chhayakar attempted to contrive to fix aspects of matches in the Global T20 in Canada in 2019, or was party to an effort to try and fix aspects of matches in the GT20, when he approached [Player A] and told him he could get [Player A] into a team on the basis that in 3 or 4 of the team's matches, [Player A] had to play according to the team's instructions.
- 16.10 The Tribunal also accepts that, based on the evidence summarised at paragraphs 13 to 15 above, the ICC has proved to the standard of comfortable satisfaction that Mr Chhayakar breached Code Article 2.1.4 on the following separate occasions:

- i) Mr Chhayakar sought to entice, induce and/or solicit Qadeer Khan to fix or be a party to his effort to fix aspects of International Matches in the Zimbabwe v UAE series in April 2019; and
- ii) Mr Chhayakar sought to entice, induce and/or solicit [Player A] to fix or be a party to his effort to fix aspects of Domestic matches in the GT20 2019

17 Sanction

17.1 The ICC request the opportunity to address the Tribunal separately on the question of sanction⁴⁷ if, as it has done, the Tribunal finds one or more charges to be proven.

17.2 The Tribunal is minded to accede to that request, which is consistent with its previous practice. The ICC must use its best endeavours to bring this award, to the attention of Mr Chhayakar and he must be given 21 days to respond after his acknowledgment of actual receipt, or, if he declines to acknowledge it at all, 28 days after it was sent to him. For its part the ICC must file its submissions on sanction 21 days after this award was sent to it. The Tribunal reserves the right to require any further submissions on sanction after those dates.

Michael J Beloff QC Chair
Annabelle Williams
Andrew Scott-Howman

29 June 2022

⁴⁷ If one or more of the charges under Code Articles 2.1.1 or 2.1.4 is or are upheld, the Code provides (at Code Article 6.2) that the range of permissible sanctions is a minimum of a five (5) year period of Ineligibility up to a maximum lifetime period of Ineligibility. For the Code Article 2.4.6 offence, the range of permissible sanctions is a minimum six (6) month period of Ineligibility up to a maximum of a five (5) year period of Ineligibility, and for the Code Article 2.4.7 offence, the range of permissible sanctions is a period of Ineligibility up to a maximum of a five (5) years.

**IN THE MATTER OF PROCEEDINGS BEFORE THE ANTI-CORRUPTION TRIBUNAL
ESTABLISHED UNDER THE ICC ANTI-CORRUPTION CODE AND THE
CRICKET CANADA ANTI-CORRUPTION CODE**

BETWEEN:

**INTERNATIONAL CRICKET COUNCIL (“ICC”)
(ON ITS OWN BEHALF AND ON BEHALF OF CRICKET CANADA (“CC”))**

-and-

MR MEHAR CHHAYAKAR (“Mr Chhayakar”)

AWARD ON SANCTION

INTRODUCTION

1. On 29 June 2022 the Anti-Corruption Tribunal (“the Tribunal”) handed down an award (the Liability Award) in which it found Mr Chhayakar guilty of seven offences under the ICC Anti-Corruption Code (“the Code”).
2. In the Liability Award the Tribunal wrote, inter alia, as follows

“Sanction

17.1. The ICC request the opportunity to address the Tribunal separately on the question of sanction⁴⁸ if, as it has done, the Tribunal finds one or more charges to be proven.

17.2 The Tribunal is minded to accede to that request, which is consistent with its previous practice. The ICC must use its best endeavours to bring this award to the attention of Mr Chhayakar and he must be given 21 days to respond after his acknowledgment of actual receipt, or, if he declines to acknowledge it at all, 28 days after it was sent to him. For its part the ICC must file its submissions on sanction 21 days after this award was sent to it.”

⁴⁸ If one or more of the charges under Code Articles 2.1.1 or 2.1.4 is or are upheld, the Code provides (at Code Article 6.2) that the range of permissible sanctions is a minimum of a five (5) year period of Ineligibility up to a maximum lifetime period of Ineligibility. For the Code Article 2.4.6 offence, the range of permissible sanctions is a minimum six (6) month period of Ineligibility up to a maximum of a five (5) year period of Ineligibility, and for the Code Article 2.4.7 offence, the range of permissible sanctions is a period of Ineligibility up to a maximum of a five (5) years.

3. On 19 July 2022 (i.e. within 21 days after receipt of the Liability Award) the ICC duly and timeously provided its submissions on sanction which were sent to Mr Chhayakar as well as to the Tribunal. However neither the ICC nor the Tribunal has received anything in response from Mr Chhayakar by way of submissions on sanction or otherwise. Nor has the ICC received an acknowledgment of receipt by Mr Chhayakar of either the Liability Award or the ICC's submissions on sanction.
4. On 26 August 2022, Ms Sally Clark for the ICC sent a WhatsApp to Mr Chhayakar's mother attaching the ICC's submissions again and informed Mr Chhayakar and the Tribunal that, out of fairness, the ICC would be prepared to offer Mr Chhayakar one final opportunity to submit any comments he may wish the Tribunal to take into account on sanction, provided that any such comments were received by 5 pm Dubai time on Monday 29 August 2022 ("the extended date"). In circumstances where nothing was received from Mr Chhayakar by this deadline, the ICC invited the Tribunal to make its determination on sanction on the basis of the submissions provided by the ICC.
5. Nothing having been received from or on behalf of Mr Chhayakar by the extended date, the Tribunal has decided that it must now make its award on sanction ("the Sanction Award"). On review of the material correspondence, it is satisfied that Mr Chhayakar has had every opportunity to engage with the proceedings and has failed to do so. It draws attention in this context to paragraphs 9.9, 10.5 and 10.6 of the Liability Award which suggest that this failure was deliberate. The Tribunal recognizes that, in circumstances where it has heard only one side of the argument, it has a special responsibility to analyze and assess the relevant issues with appropriate care.

RANGE OF SANCTIONS

6. The Liability Award records that the Anti-Corruption Tribunal concluded that Mr Chhayakar was guilty of the following seven offences under the Code:
 - 6.1 Code Article 2.1.1 (on two separate occasions) – *"Fixing or contriving in any way or otherwise influencing improperly, or being a party to any agreement or effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any*

other aspect of any International Match, including (without limitation) by deliberately underperforming therein.”⁴⁹

6.2 Code Article 2.1.4 (on two separate occasions) - *“Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.1”*.⁵⁰

6.3 Code Article 2.4.6 (on two separate occasions): *“Failing or refusing, without compelling justification, to cooperate with any investigation carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the ACU (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) as part of such investigation”*.⁵¹

6.4 Code Article 2.4.7: *“Obstructing or delaying any investigation that may be carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant), including (without limitation) concealing, tampering with or destroying any documentation or other information that may be relevant to that investigation and/or that may be evidence of or may lead to the discovery of evidence of Corrupt Conduct under the Anti-Corruption Code”*.⁵²

7. The range of Ineligibility for the above offences is prescribed by Code Article 6.2. For offences under Code Articles 2.1.1 and 2.1.4 the minimum period of Ineligibility is five (5) years and a maximum of a lifetime; for offences under Code Article 2.4.6 the minimum period of Ineligibility is six (6) months and a maximum of five (5) years; and for offences under Code Article 2.4.7 the minimum period of Ineligibility is zero and a maximum of five (5) years. Additionally, for each offence, the Tribunal has the discretion to impose a fine of such amount as it deems appropriate.

FACTORS RELEVANT TO THE TRIBUNAL’S DETERMINATION OF SANCTION

8. In accordance with Code Article 6.1, where a breach of the Code is upheld by an Anti-Corruption Tribunal, it is necessary for the Anti-Corruption Tribunal to impose an appropriate sanction upon the Participant from the range of permissible sanctions set

⁴⁹ Liability Award, para 16.

⁵⁰ As above.

⁵¹ Liability Award, paras 9.9 and 9.10 in respect of the 2019 charge, and 10.6 in respect of the 2021 charge.

⁵² Liability Award, para 11.

out in Code Article 6.2. In determining that sanction, the Anti-Corruption Tribunal must determine the relative seriousness of the offence, including identifying any relevant aggravating and mitigating factors (Code Articles 6.1.1 and 6.1.2).

9. The Tribunal in the case of ICC v Zoysa⁵³ considered the application of the sanctioning provisions of the Code.⁵⁴ It was concluded that, in determining the appropriate sanction in an anti-corruption case, a Tribunal must undertake a qualitative assessment of the weight to give to each element prescribed by the Code (i.e., Code Articles 6.1.1 and 6.1.2), while bearing in mind that the purpose of any sanction is to deter and to maintain public confidence in the sport.
10. While the Tribunal recognizes that, as to sanction, each case must ultimately turn on its own particular facts, it is content, albeit not compelled⁵⁵, to adopt the approach of its predecessors who have had to consider, interpret and apply the Code's material provisions. It has also found useful the reasoning of bodies such as the Court of Arbitration for Sport ("CAS") which has had to consider corruption offences under other codes, not least but not only because it is the court of appeal available to persons in Mr Chhayakar' position as well as to the ICC⁵⁶. The concept of a *lex sportiva* or (more accurately) *ludica*⁵⁷ is also engaged.

Seriousness of the offending

11. Mr Chhayakar has been found by the Tribunal to have committed four offences under Code Article 2.1. The Tribunal accepts that the Article 2.1 offences are the most serious contemplated by the Code, and go to the very core of the fundamental sporting imperatives that underpin it. The commission of such offences by a Participant always attract a period of ineligibility of at least five years and can, in appropriate cases, result

⁵³ Decision of the Tribunal dated 7 April 2021 ("the Zoysa decision").

⁵⁴ See para 33 in the Zoysa decision.

⁵⁵ The Code recognizes no doctrine of binding precedent.

⁵⁶ Code Article 7.

⁵⁷ *AEK Athens and SK Slavia Prague v UEFA CAS 98/200 para 156 instancing the common support for "the prohibition of unreasonable.. measures"*

in a ban up to and including a lifetime ban from the sport⁵⁸ - such cases can include those where (as here) a participant has sought to corrupt others⁵⁹.

12. Breaches of Articles 2.4.6 and 2.4.7 are offences of a different character involving impediments to the ICCs proper performance of its functions under the Code. The Tribunal nonetheless accepts that the commission of such offences are also at odds with the fundamental sporting imperatives underpinning the Code (including at Code Article 1.1.4): *'It is the nature of this type of misconduct [i.e. corruption] that it is carried out under cover and in secret, thereby creating significant challenges for the ICC in the enforcement of rules of conduct'*⁶⁰ and the Tribunal acknowledges that it is for this reason that the Code includes obligations on Participants to cooperate with the ACU in investigations of potential Corrupt Conduct.
13. In light of the inherent seriousness of the offending, the ICC submits that in determining the appropriate sanction the Tribunal should weigh very heavily the fundamental sporting imperatives that underpin the Code - including in particular (1) deterring others from similar wrongdoing (i.e., preventing corrupt practices from

⁵⁸ See PTIOs v Lindhal CAS 2017/A/4956 ("Lindhal"), paras 61-78, making clear (at paras 68-69) that '[A] severe sanction is required to punish and deter match-fixing and ... permanent eligibility may be a proportionate sanction for players who are involved in such corruption offences ... in order to be considered appropriate and proportionate, [permanent eligibility] must be based on the given circumstances in each case...'. (Lindhal is a tennis case concerning the Tennis Anti-Corruption Program, but the reasoning is applicable in the Tribunal's view, *mutatis mutandis*, to the Code).

⁵⁹ See, e.g., ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019 ("Ahmed"), para 19, quoting para 8.33 of Savic v PTIOs CAS 2011/A/2621 (Savic"), a tennis case concerning the proportionality of a lifetime ban (which quotation itself refers to various other previous CAS cases). In Ahmed, the Ahmed brothers both received lifetime bans (the only such bans imposed to date under the Code), as specifically sought by the ICC in that case, having engaged in a prolonged and sophisticated campaign of corrupt conduct. In Savic, the tennis player David Savic received a lifetime ban for an attempt to corrupt one other player.

⁶⁰ See ICC v Ansari, Award dated 19 February 2019 ("Ansari"), at para 7.15.2.

undermining the sport),⁶¹ (2) maintaining public confidence in the sport⁶² and (3) preserving public confidence in the readiness, willingness and ability of the ICC and its National Cricket Federations to protect the sport from such corrupt practices.⁶³ The Tribunal accepts the materiality of the factors to which the ICC draws attention to its determination of the appropriate sanction in Mr Chhayakar's case.

Aggravating and mitigating factors

14. Code Articles 6.1.1 and 6.1.2 set out lists of factors that may, respectively, aggravate or mitigate offending under the Code.

Aggravating factors

15. The ICC identifies the following aggravating factors, which it submits are relevant to the Tribunal's determination of the appropriate sanction in Mr Chhayakar's case:

15.1 Code Article 6.1.1.1 (a lack of remorse on the part of the Participant): Mr Chhayakar has exhibited no remorse for any of his Corrupt Conduct. His failure to cooperate as part of the investigatory or disciplinary process is a clear example of his lack of remorse.

⁶¹ See, e.g., ICC v Butt, Asif and Amir, 1 decision dated 5 February 2011 ("Butt"), para 217, ('We must take account of the greater interests of cricket which the Code itself is designed to preserve and protect. There must, we consider, be a deterrent aspect to our sanction'); ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019 (Ahmed), para 7 ('the Tribunal accepts that in determining the appropriate sanction against each of the Respondents it should weigh very heavily these fundamental sporting imperatives, including, in particular, the need (i) to deter others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),³ and (ii) to maintain public confidence in the sport'); ICC v Ikope, Award dated 5 March 2019 ("Ikope"), at para 8.20 ('[I]n light of the inherent seriousness of the offences, the ICC submits that the Tribunal should weigh heavily the fundamental sporting imperatives undermining (sic) the Code (Code Article 1.1) in determining the appropriate sanction – including in particular (i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport, and (ii) maintaining public confidence in the sport. The Tribunal would accept that submission too').

⁶² See e.g., in relation to the point of principle, Bolton v Law Society [1993] EWCA Civ 32 (Bolton), para 15 ('To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission ... A profession's most valuable asset is its collective reputation and the confidence which that inspires'). Also, in the sporting context, Bradley v Jockey Club [2005] EWCA Civ 1056 ("Bradley"), at para 24, ('Where an individual takes up a profession or occupation that depends critically upon the observance of certain rules, and then deliberately breaks those rules, he cannot be heard to contend that he has a vested right to continue to earn his living in his chosen profession or occupation. But a penalty which deprives him of that right may well be the only appropriate response to his offending'). See also Ahmed, para 7 and Ikope, at para 8.20 (both as quoted in the footnote immediately above).

⁶³ See Code Article 1.1.5.

- 15.2 Code Article 6.1.1.4 (potential to damage substantially the commercial value and/or public interest in the relevant International Matches): while Mr Chhayakar did not succeed in getting a player to agree to be involved in Corrupt Conduct in a match, had that not been the case and either Mr Khan and/or [Player A] had agreed to go ahead with the fix, that had the potential to substantially damage the commercial value and the public interest in the relevant International Matches.
- 15.3 Code Article 6.1.1.5 (potential to affect the result of the International Match): again while Mr Chhayakar does not appear to have succeeded in getting any player to agree to be involved in Corrupt Conduct, it is likely that any such Corrupt Conduct had it taken place would have had the potential to affect the result of the relevant International Matches, even if it was a spot fix.
- 15.4 Code Article 6.1.1.7 (where the welfare of a Participant or any other person has been endangered as a result of the offence): Through his approaches to other Participants, namely Mr Khan and [Player A], Mr Chhayakar clearly sought to corrupt others. This undoubtedly put the welfare of those other Participants at risk.
- 15.5 The Tribunal (i) is not persuaded that lack of co-operation can necessarily be equated to lack of remorse - there could obviously be other reasons for it - while agreeing that there is, in fact, no evidence of remorse on Mr Chhayakar's part (ii) does not agree that the references to risk to other participants welfare is established per se by approaches to them to become involved in corruption; such approaches are themselves proscribed by Article 2.1.4 of the Code and something more must be established to engage Article 6.1.7 which the ICC has not done in this case. With those provisos, the Tribunal accepts the existence of the aggravating factors in Mr Chhayakar's case referred to by the ICC.

Mitigating factors

16. The Code 6.1.2.2 identifies "*the Participant's good previous disciplinary record*" as a mitigating factor.
17. The ICC notes that, during the course of his career prior to his offending, to the best of its knowledge Mr Chhayakar has not had any relevant previously disciplinary record

but submits that this may count for little when weighed against the seriousness of his offending⁶⁴.

18. The Tribunal must assume that the ICC has knowledge of Mr Chhayakar's disciplinary record or materially the absence thereof and emphasises that, absent any cogent contrary evidence, it must assume that he has not been guilty of any previous offence. It agrees that this clean record is of no great weight in its overall assessment of the appropriate sentence in his case.

19. The Tribunal cannot identify any other mitigating factors.

APPLICATION OF CODE ARTICLE 6.3.2

20. Mr Chhayakar been found by the Tribunal to have committed seven separate offences under the Code each, some of which arose out of the same incident or facts. In such circumstances, Code Article 6.3.2 is engaged; it provides that *'where a Participant is found guilty of committing two offences under the Anti-Corruption Code in relation to the same incident or set of facts, then (save where ordered otherwise by the Anti-Corruption Tribunal for good cause shown) any multiple periods of Ineligibility imposed should run concurrently (and not cumulatively)'*.

21. Previous Anti-Corruption Tribunals have noted that (1) Code Article 6.3.2 does not define the degree of proximity for the requisite relationship to subsist between the offence and the relevant incident or set of facts, (2) under English law, which is the governing law of the Code,⁶⁵ proximity is dictated by context,⁶⁶ and the relevant context here is of the exception to the general rule that would allow the Tribunal freedom to determine whether periods of Ineligibility should run cumulatively or concurrently, and (3) in principle therefore the phrase *'in relation to'* should be construed narrowly rather than broadly in the context of Code Article 6.3.2.⁶⁷ Ansari took into account whether offences were *'intrinsically distinct'*.⁶⁸

⁶⁴ See Ansari, at para 8.3 (*"The Tribunal appreciated that this is the maximum sanction in terms of ineligibility vouched for by the Code but the seriousness of the offences enhanced by substantial aggravating factors against which there is but a single and minor mitigating factor to be set off, justify the conclusion that it is appropriate. The fact that it is possible to envisage offences against each Article of even greater gravity than Mr Ansari's does not of itself compel a reduction below the maximum in his case. Cricket would, in the Tribunal's view, be better off without Mr Ansari's participation for the period it has determined."*)

⁶⁵ Code Article 11.5.

⁶⁶ See, for example, Svenska Petroleum Exploration AB v Lithuania [2006] EWCA Civ 1529 at para 137.

⁶⁷ See Ansari, para 7.6 ff; Ahmed, para 16).

⁶⁸ See Ansari ditto.

22. In Mr Chhayakar's case, the Article 2.1.1 and 2.1.4 charges in respect of the approach to Mr Khan in April 2019 arise out of the same incident or set of facts and thus, in accordance with Article 6.3.2, the ICC submits that any sanctions imposed in respect of these offences should run concurrently with each other. The Tribunal agrees.
23. Similarly, the Article 2.1.1 and 2.1.4 charges in respect of the approach to [Player A] arise out of the same incident or set of facts and thus, in the ICC's submissions, any sanctions imposed in respect of these offences should run concurrently with each other. The Tribunal again agrees.
24. The approach to Mr Khan and the approach to [Player A] are separate incidents and do not arise out of the same incident or set of facts. As such, in the ICC's submission, any sanctions imposed in relation to the Khan approach should run cumulatively with any sanctions imposed in respect of the [Player A] approach. The Tribunal again agrees. It sees no "good cause" to rule otherwise.
25. With respect to the Article 2.4.6 and 2.4.7 charges which relate to Mr Chhayakar's failure to co-operate with the ACU's ongoing investigation, the ICC submits that any sanctions imposed in relation to those offences should run concurrently with each other. The Tribunal agrees.
26. The ICC leaves the question of whether the Article 2.4.6 and 2.4.7 sanctions should run concurrently or cumulatively with the Article 2.1 sanctions to the discretion of the Tribunal which it clearly enjoys. The Tribunal will revert to this issue when it considers the appropriate overall sanction.

PREVIOUS SANCTIONS

27. The ICC has helpfully drawn the Tribunal's attention to the following cases, which, without prejudice to its observations in paragraph 10 above, the Tribunal has both read and considered:

27.1 KPJ Warnaweera – Mr Warnaweera was charged with failing to cooperate with an ACU investigation. He also failed to engage in any way with the disciplinary process. He was therefore held to have committed a breach of Article 2.4.6 and a 3-year period of ineligibility was imposed on him in his absence.

27.2 Rajan Nayer – Mr Nayer accepted a 20-year period of ineligibility after admitting making a corrupt approach to a player (Art 2.1.1), offering money to a

player in return for him getting involved in corrupt conduct (Art 2.1.3) and soliciting or enticing a player to engage in Corrupt Conduct (Art 2.1.4).

27.3 Enock Ikope – Mr Ikope was sanctioned with a 10-year period of ineligibility after being found guilty of (i) failing to cooperate with an ACU investigation, (ii) delaying an ACU investigation, and (iii) obstructing an ACU investigation by his delay and deletion of information on his mobile phone. A 5-year period of ineligibility was imposed for each offence, with two of the periods held to run concurrently, and the other cumulatively.

27.4 Sanath Jayasuriya – Mr Jayasuriya accepted a 2-year period of ineligibility in respect of his admitted breaches of Article 2.4.6 and 2.4.7.

27.5 Yousef Al Balushi – Mr Al Balushi accepted a 7-year period of ineligibility after admitting (i) making a corrupt approach to a player (Art 2.1.1), (ii) soliciting or enticing a player to engage in Corrupt Conduct (Art 2.1.4), (iii) failing to disclose details of corrupt approaches he himself had received (Art 2.4.4), and (iv) obstructing or delaying an ACU investigation (Art 2.4.7).

27.6 Nuwan Zoysa – Mr Zoysa was sanctioned with a 6-year period of ineligibility after being found guilty of (i) making a corrupt approach to a player (Art 2.1.1), (ii) soliciting or encouraging a player to engage in Corrupt Conduct (Art 2.1.4), and (iii) failing to disclose details of approaches he had received (Art 2.4.4).

27.7 Dilhara Lokuhettige – Mr Lokuhettige was sanctioned with an 8-year period of ineligibility after being found guilty of (i) making a corrupt approach to a player (Art 2.1.1), (ii) soliciting or inducing another player to engage in Corrupt Conduct (Art 2.1.4), and (iii) failing to disclose corrupt approaches he received (Art 2.4.4).

CONCLUSION ON INELIGIBILITY

28. In the Tribunal's view, Mr Chhayakar has committed serious offences of substantive corruption contrary to Article 2.1 of the Code and compounded those offences by consistently impeding the ICC in its task of enforcing the Code contrary to Article 2.4.
29. Having regard to the minimum sanctions for ineligibility set out in paragraph 7 above, the Tribunal's starting point must be a minimum of 5 years for each relevant offence. Under Article 2.4, at least an additional 6 month sanction should be imposed in each case, unless the Article 2.4 offences were to be treated as the back of the same coin as

the Article 2.1 offences (which, given their gravity, the Tribunal is not disposed to do). The maximum sanctions set out in paragraph 7 are, of course, considerably greater. In addition there are some aggravating factors to add to the scales on one side and, the Tribunal believes, a mitigating factor of lesser weight to add to the other side.

30. The Tribunal's view is that a suspension of 7 years would be proportionate and just for each of the two substantive offences (i.e. the approach to Mr Khan and the approach to [Player A]). In each case this comprise 6 years for the substantive Article 2.1 offence and 1 year for the Article 2.4 offence. It is comforted by its perception that this would not be out of line with previous ineligibility sanctions in this area.
31. The Tribunal considers that the Article 2.4 sentences should be served cumulatively with the Article 2.1 sentences to highlight their independent significance. It emphasises also the need to ensure that a Tribunal's sanctions satisfy the criteria listed in paragraphs 8-13 above - primarily, but not only, the need to deter others who might be tempted to deform the face of cricket by breaches of the Code.
32. In reaching the conclusion that a suspension of 14 years should be imposed on Mr Chhayakar, the Tribunal has borne in mind the totality principle⁶⁹ transplanted from criminal law as well as the *lex ludica* which could be applied by CAS to this award.⁷⁰

CONCLUSION ON FINE

33. The effect of the Tribunals imposition on Mr Chhayakar of a 14 year period of ineligibility is to deprive him as a matter of law from participation in cricket for that period, and in point of fact, for maybe longer.
34. The Tribunal has no knowledge of what other sources of income or assets Mr Chhayakar has or may have at his disposal to satisfy any fine but, in any event, does not consider that its imposition would serve any proper purpose beyond that served by the imposition of a lengthy period of ineligibility.

⁶⁹ In *R v Bailey* [2020] EWCA Crim 1719, the Court of Appeal gave general guidance on the correct approach to applying the principle of totality when sentencing defendants for multiple offences. The correct approach is for the court to arrive at a sentence that is "just and proportionate".

⁷⁰ See CAS 98/200 at para 156 referring to "principles of law drawn from a comparative or common denominator reading of various domestic legal systems and, in particular, the prohibition of arbitrary or unreasonable rules and measures can be deemed to be part of such *lex ludica*" - instancing an award where FINA sanctions were deemed excessive or unfair on their face. CAS 96/157 para 22.

SANCTION

35. Mr Chhayakar is ineligible to participate in cricket as defined by the Code for 14 years from the date of todays' award.

Michael J Beloff KC
Andrew-Scott Howman
Annabelle Williams

London 5/10/2022