

DECISION 2018/02

OF THE

BADMINTON WORLD FEDERATION

ETHICS HEARING PANEL

DEFENDANT: Mr Raj Gaya

PANEL: Ms Sylvia Schenk (Chair)
Ms Annabel Pennefather
Mr Kevin Carpenter

DATE: 21 November 2018

Regarding alleged violations of the:

- *Statutes of the BWF applicable prior to May 2012*
- *Statutes, Rules and/or Regulations of the BWF applicable after May 2012*
- *Statutes of the BWF applicable after June 2017*

A. PRELIMINARY MATTERS

Parties

1. The parties to this matter are:
 - 1.1. The **Badminton World Federation (“BWF”)**, the international governing body for the sport of Badminton, recognised by the International Olympic Committee (“**IOC**”);
 - 1.2. **Mr Raj Gaya**, from Mauritius, who since 1999, held offices with the BWF, the Badminton Confederation of Africa (“**BCA**”) and the Mauritius Badminton Association (“**MBA**”).

Procedural Chronology

This section provides an outline of the proceedings of the BWF and the Ethics Hearing Panel before the decision.

2. On 5 June 2018, Mr. Rune Hansen, the Chair of the BWF External Judicial Experts Group (“**EJEG**”), appointed an independent three (3)-person panel selected from the EJEG in accordance with Article 12.2 of the 2017 BWF Judicial Procedures (“**Procedures**”) to act as an Ethics Hearing Panel:
 - 2.1. Ms. Sylvia Schenk as Chair (“**Chair**”); and
 - 2.2. Ms. Annabel Pennefather and Mr Kevin Carpenter as Members (“**Members**”), together referred to as the “**Panel**”.
3. The Panel was appointed by Mr. Hansen to decide a case involving breaches of the:
 - Statutes of the BWF applicable prior to May 2012,
 - Statutes, Rules and/or Regulations of the BWF applicable after May 2012, and
 - Statutes of the BWF applicable after June 2017,allegedly committed by Raj Gaya (“**Mr Gaya**” or “the **Respondent**”), a Badminton official from Mauritius.
4. After the former President of the MBA, Bassir Mungroo, had raised several allegations of misuse of funds against Mr Gaya, the BWF has carried out an investigation into the conduct of Mr Gaya.
5. The BWF has, among others, taken the following steps:
 - a. It has requested that Mr Gaya produce documentation for the purposes of the investigation.

- b. It has investigated the use by Mr Gaya of the monies received in two ways. First, by a Forensic Accountant analysing the documentation obtained during the course of the investigation to seek to establish where the monies paid to Mr Gaya by the BCA have been used. Secondly, where funds have been allocated by the BCA to the MBA, the BWF has investigated whether the intended recipients of those monies have in fact received the monies.
 - c. It has interviewed Mr Gaya.
6. On May 15, 2018, the BWF Referral Officer ("**BWF RO**") Alexander McLin, notified the BWF that he had reviewed the case material and decided to 1) refer the case to an Ethics Hearing Panel and 2) impose a Provisional Suspension on Mr Gaya.
7. On May 16, 2018, the BWF Secretary General ("**BWF SG**"), Thomas Lund, sent a notice informing Mr Gaya, that 1) BWF is referring the case to an Ethics Hearing Panel and that 2) he is provisionally suspended from all Badminton activities under the BWF's jurisdiction. MBA and BCA were notified by the BWF with regard to the provisional suspension accordingly.
8. At that time, Mr Gaya was in Bangkok as a delegate at the BCA Annual General Meeting ("**AGM**") on 17 May and was due to attend the BWF Members Forum (18 May) and the BWF AGM (19 May).
9. The BWF Provisional Suspension meant that Mr Gaya did not attend the BWF Members' Forum and the BWF AGM.
10. On May 16, 2018, the BWF SG sent a notice to Mr Gaya providing him with 1) the Case Summary, 2) Statement of the Charges and 3) a WeTransfer link to download the information / evidence package.
11. On May 26, 2018, the BWF resent the documents that the BWF SG had sent on 16 May. The resent documents included the Case Summary, Charges and Contents of the Evidence Pack and link.
12. Acknowledgement of the receipt of these resent documents, and confirmation that Mr Gaya was able to download the material from WeTransfer, was requested.
13. On May 28, 2018, the Case Summary and Charges were uploaded successfully through WeTransfer again as the previous one had expired – the email notice from WeTransfer was sent to [REDACTED]@gmail.com, the email address known as Mr Gaya's by the BWF.
14. On May 28, 2018, a notice confirmed that [REDACTED]@gmail.com had successfully downloaded the documents via WeTransfer.
15. On June 6, 2018, BWF sent a notice of the proposed hearing dates and location together with an acknowledgement slip for Mr Gaya to sign and send back to the BWF. This was followed up the same day with a message via

WhatsApp at 13.07 hrs MYT (Malaysia Time) asking Mr Gaya to check his email. This message was confirmed as delivered on 6 June and read by Mr Gaya on 13 June (as indicated by two blue ticks being shown next to the message).

16. On June 7, 2018, the BWF Chief Operating Officer ("**BWF COO**"), Stuart Borrie, made a WhatsApp call to Mr Gaya, during which especially reiterating the importance for Mr Gaya's legal counsel to make direct contact with the BWF SG and BWF COO. The BWF COO sent a follow-up email the same day summarizing their discussion on the call.
17. On June 13, 2018, having not heard from Mr Gaya, the BWF COO attempted twice to call him via WhatsApp and followed up with an email containing a record of the attempts to contact Mr Gaya.

The same day, the BWF COO also sent a WhatsApp message asking Mr Gaya to call or email him a time that was convenient to take a call to discuss the email notice of the hearing date/location. The WhatsApp message that day was indicated as having been read.

18. On June 15, 2018, the BWF COO requested the MBA to assist in reaching out to Mr Gaya and MBA agreed.
19. On June 18, 2018, the Panel met for a conference call and took the following decisions:

- “1. The Hearing scheduled for 16-20 July 2018, in Dubai is cancelled and the dates vacated due to the lack of time now remaining for the organization and preparation of the Hearing given there is yet no response from the Respondent with regard to the charges or his attendance.

A new Hearing date will be announced after receipt of confirmation to attend a Hearing by the Respondent.

2. The Respondent shall confirm within eight (8) days upon receipt of this letter sent by courier, to the BWF Chief Operating Officer, acting as BWF contact point for the Panel, whether he will deny the charges and attend a Hearing on this case.
3. Should the Respondent deny the charges, he shall submit within three (3) weeks of receipt of this letter, to the BWF Chief Operating Officer, an answer containing:
 - a. A statement of defence;
 - b. Any defence of lack of jurisdiction;
 - c. Any exhibits or specification of other evidence upon which the Respondent intends to rely;

- d. The name(s) of any witness(es), including a short summary of their expected testimony; and
 - e. The name(s) of any expert(s) he intends to call, stating their area of expertise.
 4. If the Respondent fails to respond within the given time limit prescribed in point 2, the Panel will decide the case at hand based on the written submissions received so far.
 5. If the case is to be decided on the papers only, due to a lack of response by the Respondent, once this has been notified by the Panel, the BWF shall submit within two (2) weeks its final submissions, containing any pleadings and submission on sanctions, to the Respondent and the Panel.
 6. Upon receipt of the BWF's final submissions, the Panel will notify the Respondent and he will have a final three (3) week opportunity to provide a response before the Panel takes the decision."
20. On June 18, 2018, the letter containing the decision from the Panel was uploaded to WeTransfer and successfully delivered to Mr Gaya's first email account – [REDACTED]@gmail.com. There was no response to confirm that this was downloaded by Mr Gaya from WeTransfer.
21. On June 21, 2018, the BWF COO sent the letter from the Panel direct to Mr Gaya's two email addresses and uploaded the letter to WeTransfer. The letter was successfully delivered to Mr Gaya's second email account – [REDACTED]@intnet.mu. There was no response to confirm that the letter was read by Mr Gaya.
22. Starting on June 21, 2018, the BWF COO asked the MBA President for assistance to hand deliver the letter and followed up with various communications with MBA that eventually succeeded in a delivery receipt for a hand delivery of the Panel's letter to Mr Gaya's home address on 19 July.
23. On June 21, 2018, the BWF COO received a WhatsApp message from Mr Gaya, and a call later that evening, followed up by an email sent to Mr Gaya to document their discussions. In addition, the BWF COO sent a message to Mr Gaya via WhatsApp informing him that an email had also been sent to both of his addresses.
24. On July 11, 2018, still having received no acknowledgement or response from Mr Gaya, the BWF COO sent a copy of the Panel's letter via WhatsApp to Mr Gaya, which was received and read by him. The accompanying message asked whether Mr Gaya would respond within the time frames stipulated by the Panel. The message went unanswered.
25. On August 2, 2018, the Panel received an additional Submission from BWF dated July 30, 2018, that was sent to Mr Gaya in 12 separate WhatsApp

Messages referring to the fact that additionally both documents were sent as well via WeTransfer.

26. The BWF COO received successful delivery notices with regard to the WhatsApp and the We Transfer.
27. On August 3, 2018, the Panel held another conference call. In this conference call the Panel noted that:
 - "The Panel's letter dated June 18, 2018, has been delivered to Mr Gaya (the "Respondent") on July 11, 2018, by WhatsApp (delivered and read according to confirmation by the BWF COO and corresponding documentation).
 - The Respondent did not submit any response.
 - BWF sent additional documents to the Panel on August 2, 2018, at 18:58 CET, containing, among others, a number of additional witness statements and submission on the sanction(s) the Panel should consider if they decide the case against Mr. Gaya has been proven on the balance of probabilities."
28. Subsequently, as announced in its letter dated June 18, 2018, the Panel took the following decisions:
 - "1. The Panel will decide the case based on the written submissions received from BWF until June 6, 2018.
 2. The additional submissions from BWF dated July 30, 2018, received by the Panel on August 2, 2018, will only be taken into account with regard to numbers 42 – 49, i.e. on sanction(s). To take into account any other aspect of these additional submissions would delay the case further, which in the Panel's opinion is not in the interests of the efficient conducting of disciplinary proceedings, especially given the Respondent's refusal so far to engage in the process.
 3. The Respondent has a final three (3) week opportunity – starting with the delivery of this letter together with the additional submission from BWF to the Respondent - to provide a response before the Panel makes its decision on the case."
29. On August 4, 2018, the BWF COO sent the Panel's latest letter via WhatsApp together with 2 messages to Mr Gaya. The BWF COO received confirmation these were received and seen the same day.
30. Until the date of this decision there was no response from Mr Gaya to BWF.

Charges

31. The Charges against Mr Gaya state:

31.1 "Under the Statutes of the BWF applicable prior to May 2012:

That between about June 2011 and May 2012 Mr Gaya:

1. Received grants and/or funding from the Badminton Confederation of Africa (BCA) which grants or funding were intended to be paid to the Mauritius Badminton Association (MBA) into his personal bank account(s), and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1.
2. Requested and/or permitted grants and/or funding from the BCA to be paid into his personal bank account(s) which grants or funding were intended to be paid to the Mauritius Badminton Association MBA, and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1.
3. Failed to notify the MBA that he was receiving grants and/or funding from the BCA that was intended to be paid to the MBA into his personal bank account(s), and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1.

4. Failed to pay all of the monies that he received from the BCA that were intended to be paid to the MBA for the purposes that that money was intended to be used for, and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1.
5. Used monies which were paid by the BCA into his personal bank account(s), but which were intended for the MBA for his own benefit, and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1, and/or
 - d. He acted fraudulently in breach of Law 5.1.2 of By Law 1
6. Failed to inform the MBA and/or the officers of the MBA that the BCA had made grants and/or funding available to the MBA and by such conduct:
 - a. He brought the game of Badminton into disrepute in breach of Clause 31.1 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.2 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Law 5.1 of By Law 1.
7. Claimed money by way of expenses from the BWF in respect of sums which he had not in fact expended and/or which were less than he had expended, and by such conduct:
 - a. He failed to act honestly with BWF Law 5.1.1 of By Law 1, and/or
 - b. He acted fraudulently in breach of Law 5.1.2 of By Law 1.
8. Supported claims for expense from the BWF in respect of services that he contends that he had paid for from an entity 'Nitra' which entity was owned and/or controlled by a co-director in his company the Best Dairy

Company Limited, and thereby failed to avoid a conflict of interest and/or a matter which gives rise to an appearance of personal benefit in breach of Law 5.5.1. of By Law 1.”

31.2 “Under the Statutes, Rules and/or Regulations of the BWF applicable after May 2012:

That between about May 2012 and June 2017 Gaya:

9. Received grants and/or funding from the BCA which grants or funding were intended to be paid to the MBA into his personal bank account(s), and by such conduct:
 - a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council
10. Requested and/or permitted grants and/or funding from the BCA which grants or funding were intended to be paid to the MBA into his personal bank account(s), and by such conduct:
 - a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council
11. Failed to notify the MBA that he was receiving grants and/or funding from the BCA that was intended to be paid to the MBA into his personal bank account(s), and by such conduct:
 - a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council
12. Failed to inform and/or misled (i) the MBA and/or (ii) the officers of the MBA and/or (iii) the persons intended to benefit from those grants, of the

fact that the BCA had made grants and/or funding available to the MBA and/or the true sum of those grants and/or funding, and by such conduct:

- a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council
13. Failed to pay all of the monies that he received from the BCA that were intended to be paid to the MBA for the purposes that that money was intended to be used for, and by such conduct:
- a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council
14. Used monies which were paid by the BCA into his personal bank account(s) but which were intended for the MBA for his own benefit, and by such conduct:
- a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council, and/or
 - d. He acted fraudulently in breach of Clause 6.1.2 of the Guidelines for Council
15. Claimed money by way of expenses from the BWF in respect of sums which he had not in fact expended and/or which were less than he had expended, and by such conduct:
- a. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council, and/or
 - b. He acted fraudulently in breach of Clause 6.1.2 of the Guidelines for Council.

16. Forged accounting documents and/or records and then submitted those forged documents on behalf of the MBA and/or on behalf of Badminton South Africa, and by that conduct
 - a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council, and/or
 - d. He acted fraudulently in breach of Clause 6.1.2 of the Guidelines for Council.

17. Forged a letter dated 23 March 2016 which authorised payment of monies from the BCA to the MBA and/or gave a false and dishonest reason for the making of those payments, and by that conduct
 - a. He brought the game of Badminton and/or the BWF into disrepute in breach of Clause 29 of the BWF Constitution, and/or
 - b. He failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution, and/or
 - c. He acted dishonestly and/or failed to act honestly in breach of Clause 6.1.1 of the Guidelines for Council, and/or
 - d. He acted fraudulently in breach of Clause 6.1.2 of the Guidelines for Council.

18. Supported claims for expense from the BWF in respect of services that he contends that he had paid for from an entity 'Nitra' which entity was owned and/or controlled by a co-director in his company the Best Dairy Company Limited, and thereby he failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution.

19. Supported claims for expense from the BWF in respect of services that he contends that he had paid for from an entity 'SODNAC' which entity was owned and/or controlled by a shareholder in his company the Best Dairy Company Limited, and thereby he failed to act in an ethical manner in breach of Clause 4.6 of the BWF Constitution."

31.3 "Under the Statutes of the BWF applicable after June 2017

That between about December 2017 and 30 April 2018 Mr Gaya:

20. failed when a Demand had been made of him to produce documents, particularly banking statements, that had been properly requested of him, within the time allowed for the documents to be furnished, and thereby

failed to cooperate with the fully with an investigation conducted by the Secretary General, or his appointed investigators and agents, and by that conduct breached Clauses 5.4 and/or 5.11 of the BWF Judicial Procedures.”

B. APPLICABLE LAW

Jurisdiction

32. Article 31 of the BWF 2017 Constitution recognises the Ethics Hearing Panel as a judicial body of the BWF. Being an "Elected Official" Mr Gaya is a "covered person" according to the 2017 BWF Judicial Procedures clause 3.3.
33. The following table sets out the relevant BWF rules and regulations as they have been in force, and developed, during the applicable period:

KEY: **Pre-2012** **Post-2012** **2017**

	BWF Constitution 2010/2011	BWF Constitution 2012/2013	BWF Constitution 2017	BWF Judicial Procedures 2017	BWF Elected Officials Code of Conduct 2017	BWF Code of Ethics 01 June 2017
Disrepute	<p>Clause 31.1</p> <p><i>"Council, or any Disciplinary Committee it appoints, shall have power on behalf of the Federation to penalise a Member Association, player, competition official, or other person for infringement of the Anti-Doping Statutes (see Competition Regulation 29), for misconduct during competition, or for actions that bring the game of Badminton into disrepute."</i></p>	<p>Clause 29.1</p> <p><i>"Council, or any Disciplinary Committee it appoints, shall have power on behalf of the Federation to penalise a Member Association, player, competition official, or other person, for misconduct during competition, or for actions that bring the game of Badminton into disrepute."</i></p>	<p>Clause 29.1</p> <p><i>"Council, or any Disciplinary Committee it appoints, shall have power on behalf of the Federation to penalise a Member, player, coach, competition official, or other person for infringement of the Statutes, for misconduct during competition, or for actions that bring the game of Badminton or the Federation into disrepute."</i></p>	<p>Clause 6.1.3</p> <p><i>"Referrals to the Ethics Hearing Panel shall relate to alleged breaches of the...Elected Officials Code of Conduct."</i></p> <p>Clause 6.1.5</p> <p><i>"Referrals to the Ethics Hearing Panel shall relate to alleged breaches of the following...including the content of the Code of Ethics related to the person(s) covered under the [Elected Officials Code of Conduct]."</i></p>	-	-

<p>Behaving in an ethical manner</p>	<p>Clause 4.2</p> <p><i>“Anyone who deals with the Federation and/or shares in its activities in any capacity, notably those referred to in Clause 32, commits themselves by their actions to behave in a correct and ethical manner.”</i></p> <p>Clause 32.2</p> <p><i>“Members or persons dealing with the Federation or sharing in its activities including a person who...acts as an official (trainer, coach, team manager, delegate, representative etc) of a team, a Member Association or its affiliates.”</i></p>	<p>Clause 4.6</p> <p><i>“Anyone who deals with the Federation and/or shares in its activities in any capacity, notably those referred to in Clause 32, commit themselves by their actions to behave in a non-discriminatory and ethical manner.”</i></p> <p>Clause 30.1.5</p> <p><i>“Members or persons dealing with the Federation or sharing in its activities, including a person who...acts as an official (trainer, coach, team manager, delegate, representative, doctor etc) of a team, a Member or its affiliates.”</i></p>	<p>Clause 4.6</p> <p><i>“Anyone who deals with the Federation and / or shares in its activities in any capacity, notably those referred to in Clause 30, commit themselves by their actions to behave in a non-discriminatory and ethical manner.”</i></p> <p>Clause 30.1.2</p> <p><i>“Members or persons dealing with the Federation or sharing in its activities, including a person who... acts as an official (trainer, coach, team manager, delegate, representative, doctor etc) of a team, a Member or its affiliates.”</i></p>		<p>Article 3.1</p> <p><i>“Elected Officials covered under this Code are required to adhere to the</i></p> <p><i>General Provisions of the BWF Code of Ethics as well as the Core Values and Principles for Conduct defined in the BWF Code of Ethics.”</i></p>	<p>Article 3.c)</p> <p><i>“Persons covered under this Code shall... perform their duties with due care and diligence and behave in a dignified and ethical manner in the discharge of their duties while always acting with complete honesty, credibility, impartiality and integrity.”</i></p>
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<p>Ethical duties</p>	<p>By Law 1, 5.1</p> <p><i>“Duty to Act Honestly</i></p> <p>5.1.1 <i>Council Members must deal honestly with the BWF.</i></p> <p>5.1.2 <i>Council Members must not act fraudulently.”</i></p> <p>By Law 1, 5.2</p> <p><i>“Duty of Loyalty</i></p> <p>5.2.1 <i>When attending any meeting of Council or its Committees, members thereof shall not, under any</i></p> <p><i>circumstances, regard themselves or be regarded, as representing or acting on behalf of their own or any other affiliated Association. They shall speak and vote on all matters only in the general interest of the Federation and the game as a whole.”</i></p>				<p>Article 4.8</p> <p><i>“Duty to Act Honestly: At all times Elected Officials shall act honestly...or undertake or attempt to undertake any kind of fraudulent behaviour while serving as an Elected Official.”</i></p>	<p>Article 4.1</p> <p><i>“Loyalty: Loyalty to the purposes, objectives, values and principles of the BWF is a fundamental obligation of parties covered under the Code.”</i></p>
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33.1 Prior to 2012, the BWF Constitution stipulated in Article 31 ‘Discipline’:

“31.1. Council, or any Disciplinary Committee it appoints, shall have power on behalf of the Federation to penalise a Member Association, player, competition official, or other person for infringement of the Anti-Doping Statutes (see Competition Regulation 29), for misconduct during competition, or for actions that bring the game of Badminton into disrepute.”

33.2 After 2012, the BWF Constitution stipulated in Article 29 'Discipline':

"29.1 Council, or any Disciplinary Committee it appoints, shall have power on behalf of the Federation to penalise a Member Association, player, competition official, or other person, for misconduct during competition, or for actions that bring the game of Badminton into disrepute."

34. Thus as a form of "Disciplinary Committee", the Panel is authorised under the former and the current version of the BWF Constitution to "penalise a Member, player, coach, competition official, or other person for infringement of the Statutes, for misconduct during competition, or for actions that bring the game of Badminton or the Federation into disrepute."

35. In accordance with clause 6.1 of the BWF Judicial Procedures from May 2017, the Ethics Hearing Panel has jurisdiction to deal with matters regarding alleged breaches of the "Elected Officials Code of Conduct" which came into force on June 1, 2017.

36. Prior to 2012, the BWF Constitution stipulated in clause 4.2:

"Anyone who deals with the Federation and /or shares in its activities in any capacity, notably those referred to in Clause 32, commits themselves by their actions to behave in a correct and ethical manner."

According to Article 32.2 this includes *"acts as an official (trainer, coach, team manager, delegate, representative etc) of a team, a Member Association or its affiliates;"*

37. Additionally, prior to 2012, By-Law 1 to the BWF Constitution stated:

5.1. Duty to Act Honestly

5.1.1. Council Members must deal honestly with the BWF

5.1.2. Council Members must not act fraudulently

38. After 2012 the BWF Constitution stipulated in clause 4.6:

"Anyone who deals with the Federation and /or shares in its activities in any capacity, notably those referred to in Clause 30, commits themselves by their actions to behave in a correct and ethical manner."

According to Article 30.1.2 this includes *"acts as an official (trainer, coach, team manager, delegate, representative, doctor etc) of a team, a Member Association or its affiliates;"*.

Additionally, the BWF Code of Ethics defines as *"conduct that is not permitted"* under 4. *"Fraudulent expense claims"* and under 5. *"Failing to cooperate with disciplinary process"*.

39. Pursuant to Article 6.3 of the Procedures, the case against Mr Gaya was referred to the Ethics Hearing Panel following consideration of the evidence by the BWF Referral Officer.
40. As such, the Panel has jurisdiction to hear this matter. It is noted that Mr Gaya, in his verbal exchanges with the BWF, has questioned whether the investigation and the following proceedings have a legal basis.

Burden of proof and standard of proof

41. Pursuant to Clause 8 of the Procedures, the "*BWF shall have the burden of establishing that a violation has been committed on the balance of probabilities, a standard that implies that on the preponderance of the evidence before the Panel, it is more likely than not that a breach of the relevant BWF Code had occurred.*"

Procedural Rules

42. The following procedural rules within the Procedures and 2016 Code are extracted in full insofar as they are relevant to the findings set out at **Part D**.

Procedures

"13.1 Disciplinary procedures in any Hearing Panel shall be based on the rules of a fair trial and shall respect the fundamental rights of all parties. The Respondent has the right to a timely, fair and impartial Hearing."

2016 Code

"6.1 The BWF or their appointed investigators and agents shall have the right to conduct an initial interview and follow-up interviews, if necessary as determined solely by the BWF, with any Covered Person in furtherance of investigating the possibility of a commission of a Corruption Offence.

6.1.6 All Covered Persons must cooperate fully with investigations conducted by the BWF or their appointed investigators and agents including answering any reasonable question when being interviewed and giving evidence at hearings, if requested.

...

6.1.8 If the BWF believes that a Covered Person may have committed a Corruption Offence, the BWF may make a Demand to any Covered Person to furnish to the BWF any information or equipment or device holding such information regarding the alleged Corruption Offence, including, without limitation,

6.1.8.1 records relating to the alleged Corruption Offence (including, without limitation, itemized telephone billing statements, text of SMS messages received and sent, Facebook, Twitter and other social media accounts, banking statements, betting records, internet service records, mobile devices and tablets, computers, hard drives and other electronic information storage devices), and

6.1.8.2 a written statement setting forth the facts and circumstances with respect to the alleged Corruption Offence. The Covered Person shall furnish such information within seven (7) business days of the making of such Demand, or within such other time as may be set by the BWF.

6.1.9 Any information furnished to the BWF shall be

6.1.9.1 kept confidential except when it becomes necessary to disclose such information in furtherance of the prosecution of a Corruption Offence, or when such information is reported to administrative, professional, or judicial authorities pursuant to an investigation or prosecution of non-sporting laws or regulations and

6.1.9.2 used solely for the purposes of the investigation and prosecution of a Corruption Offence.”

C. FACTS OF THE CASE

43. Below is a summary of the relevant facts and allegations based on BWF's written submissions, pleadings and evidence. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the findings at **Part D**
44. Mr Gaya has been a Council Member of the BWF (and its precursor the International Badminton Federation) from 1999 and until May 2017. He has also held other offices with the BWF, the MBA and BCA. As holder of the post of BCA Secretary General, Mr Gaya was central to the planning, implementation and distribution of substantial funding allocated by the BWF to the BCA for the purpose of the development of Badminton in Africa. Not to mention being ultimately responsible for the proper accounting of such monies.
45. Specifically, from 2011 through to 2017, Mr Gaya held offices with both the MBA and the BCA. In this period the BCA received funding from the BWF. The BCA allocated some of that funding for the development of the sport of Badminton in Mauritius. The funding was allocated in six broad areas:
- (i) for equipment;
 - (ii) organisation grants for running of tournaments in Mauritius;
 - (iii) for Mauritian teams travelling to international competitions;
 - (iv) for technical officials;
 - (v) for training school teachers in the country as part of the 'Shuttle Time' program; and
 - (vi) for players.

Once funds were allocated to the MBA by the BCA, the intention was that the MBA would use the funds sent by the BCA for the purposes the funding was intended for and the MBA would then provide the BCA with a 'receipt' for the monies sent demonstrating the allocation of the MBA's receipts from the BCA to the purposes for which it was sent.

46. Throughout this period both the BCA and the MBA had their own bank accounts.
47. Mr Gaya adopted and/or put in place a system where monies allocated by the BCA to the MBA were not transferred to the MBA's bank account. Mr Gaya instead directed that the monies due to the MBA from the BCA would be paid into his personal bank account.
48. The MBA did not however question this arrangement. This may have been due to Mr Gaya being in charge of the transaction in both organisations, i.e. MBA might not have known that it was receiving money from the BCA and this was transferred to Mr Gaya's personal bank account.

49. In 2014-5 Chipo Zumburani was appointed as Acting Treasurer and then Treasurer of the BCA. The BCA adopted a revised accounting policy to reconstruct its accounts for 2013, and it was through that process that the “unorthodox” system of money transfers was discovered. In doing so Zumburani found that the BCA had paid considerable sums to Mr Gaya personally, when that money had been intended for specific Badminton purposes in individual African countries and should have been paid to the relevant national association accordingly.
50. Zumburani had examined the BCA records and calculated that between 2011 and 2017 a total of \$1,098,906 was paid by the BCA to Mr Gaya’s personal bank account or accounts nominated by him; of that sum \$154,039 was between 2011 and June 2017 intended for the MBA.
51. Further, it was discovered that the BCA was not in possession of any records of receipts from the MBA to the BCA for funds that had been sent. These findings were raised with Mr Gaya.
52. Between 2015 and December 2016, Mr Gaya sent to the BCA a series of 18 documents, bearing the signature of Rajen Pultoo as General Secretary of MBA, which purported to be receipts issued by the MBA to the BCA for monies that the BCA had sent to the MBA (collectively the "**MBA Receipts**"). The MBA Receipts were presented by Mr Gaya as accounting records for the purpose of demonstrating that the BCA has sent monies to the MBA, and that the MBA has received and used those monies for the purposes that the MBA Receipts were issued.
53. Not one of the MBA Receipts appears to be a genuine document, not one of the MBA Receipts was in fact signed by Rajen Pultoo and his electronic signature had been added to them without his knowledge. In fact, each and all of the MBA Receipts had been created by Mr Gaya and the signature of Pultoo had been placed on the MBA Receipts by Mr Gaya. The total sum that the MBA Receipts purport to document is \$158,509.
54. In fact, in the period 2011 – 2017, the MBA never issued a receipt to the BCA.
55. The BCA also requested Mr Gaya to produce confirmation of monies that the BCA had sent to Badminton South Africa ("**BSA**"). Mr Gaya produced documents that the BSA had submitted receipts to the BCA on 2 July 2015, 11 July 2015 and 30 September 2015 for payments received by it. The language and style of those documents were very similar to the MBA Receipts and they purport to be signed by Herman Nagel, the BSA’s General Manager at the relevant time (now Chief Operating Officer).
56. Herman Nagel has confirmed the documents were not sent by the BSA or signed by him. The BSA had an invoice system which allowed monies to be transferred directly to its bank account.
57. As a result of these matters, the BCA in 2015 requested that Mr Gaya provide the details for MBA’s bank account. Mr Gaya said that this was not possible

because of difficulties with the banking system in Mauritius. The BCA then required written confirmation of that position from the MBA and asked Mr Gaya to produce that written confirmation.

58. In response Mr Gaya produced to the BCA a letter dated 23 March 2016. The letter purports to be from the MBA (using a letterhead with its name) to the BCA and authorised the BCA to continue paying monies due to the MBA into the personal bank account of Mr Gaya. It gave this reason for that arrangement 'Presently our bank account is not set to receive money from abroad or to do foreign currency transactions and if we start doing it we will have lot of reports to do to the authorities, Ministry of Sports, Olympic committee, etc.'. The letter bears a stamp for the BCA and purports to be signed by Bashir Mungroo as President of the MBA.
59. The letter was not authorised by the MBA, it was not sent by the MBA, and it was not signed by Bashir Mungroo, who since 2013 had been the President of the MBA.
60. The reasons given for continuing payment to the private account of Mr Gaya were also false:
 - a. The MBA had a bank account which could receive foreign currency, this is confirmed by payments made to it by the BWF in \$US on 6 June 2013 and 15 December 2015.
 - b. The MBA did not know that Mr Gaya was receiving monies directly from the BCA into his personal bank account.
 - c. The MBA did not know that the BCA was in fact sending any monies to the MBA other than sums of about Rs 144,900 in 2012, and Mr Gaya, when asked, had told Mungroo that the BCA was not in fact giving grants to the MBA.
61. The BCA continued to pay monies allocated by it for purposes connected with the sport of Badminton to Mr Gaya's personal bank account until 2017.
62. In June 2017 the BCA appointed Sahir Edoe as its Secretary General as a replacement for Mr Gaya. Edoe discovered that payments were being made by the BCA to Mr Gaya's personal account. He was shown the letter dated 23 March 2016 by Zumburani and, because he knew Bassir Mungroo, he considered that the letter was not something that Mungroo would have written. He met Mungroo and raised the matter with him.
63. Mungroo was still at that time President of the MBA. As a result of Mungroo's contact with Edoe, Mungroo discovered that:
 - a. The letter of 23 March 2016 was forged; and
 - b. The BCA had been offering and sending grants and funding intended to be for the MBA for a number of years, and had been sending those monies to Mr Gaya's personal bank account.

64. At about the same time Edo and Mungroo discovered that an 'invoice' had been sent by the MBA to Badminton South Africa (BSA). That invoice was dated 21 July 2017, and purported to have been sent by Bashir Mungroo requesting payment of \$5,040 to the personal bank account of Mr Gaya. In fact, Mungroo had not written and sent it.
65. The discovery of these forged documents led to Mungroo and Pultoo confronting Mr Gaya. Meetings took place in August 2017. In the course of those meetings:
 - a. Mr Gaya admitted that he had created the forged documents. In doing so, he contended that he copied the letter of 23 March 2016 to Mungroo's email account (which Mungroo states to be false);
 - b. Mr Gaya gave explanations that he received the monies from the BCA and had used the money for 'badminton related expenses', 'political reasons connected to Africa', for 'political reasons' and 'to get African people on his side'; and
 - c. Mungroo was removed as President of MBA.
66. Following the meetings, Mungroo wrote to the BCA President, Judge Danlami Sanchi, by letter of 1 September 2017 raising his complaints regarding Mr Gaya and the matter came to the attention of the BWF who investigated the allegations within that letter.
67. The BWF's investigation comprised the following steps:
 - a. Requesting Mr Gaya produce documentation for the purposes of the investigation.
 - b. Investigating the ways and purposes for which the monies Mr Gaya received were used. First, by a Forensic Accountant analysing such documentation as is available to seek to establish where the monies paid to Mr Gaya by the BCA had been used, and producing an Expert Report accordingly. Secondly, where funds have been allocated by the BCA to the MBA, the BWF investigated whether the intended recipients of those monies did in fact receive the monies.
 - c. Interviewing Mr Gaya.
68. By a letter dated 30 December 2017, the BWF SG Thomas Lund made a demand pursuant to Clause 5.11 of the Procedures, that Mr Gaya, by 8 January 2018, furnish to the BWF the following documents:
 - Bank statements from 2011 to present related to his two bank accounts in Mauritius;
 - Bank statements from 2011 to present related to his bank account in South Africa; and
 - Any other bank account into which BCA funds were transferred to.

69. Mr Gaya replied to that demand by email. He stated that he had experienced problems with bank closures due to vacation and cyclone but, by email of 18 January 2018 stated, *"I was told I will receive the statements this week"*.
70. Mr Gaya was then interviewed by the BWF Legal Manager Thomas Delaye Fortin and Paul Scotney, Consultant for BWF, on 4 February 2018. He produced spreadsheets prepared by him which he contended were transcriptions of his bank statements (the "**Spreadsheets**"). The Spreadsheets purported to reflect the movements in and out of three US\$ accounts belonging to Mr Gaya. Mr Gaya refused to provide the actual bank statements themselves which would contain the underlying data. From a short examination of the bank statements during the interview, it was noted that the original documents would contain further narrative details that the Spreadsheets do not contain, and therefore the information provided by Gaya at the interview was incomplete. Mr Gaya refused to allow the BWF to have copies of such bank statements.
71. By letter of 14 February 2018, the BWF SG made a second demand for the same material.
72. By email of 13 March 2018, Mr Gaya provided an email response to the second demand. He contended he was not prepared to provide the documents requested because firstly they would fall into the hands of the press in Mauritius, and secondly because he had already provided spreadsheets with their contents. He raised a number of questions to the BWF asking for confirmation of its jurisdiction.
73. By letter of 23 March 2018, a third and final demand was made for the same material, with its production required by 6 April 2018.
74. Mr Gaya replied by email of 10 April 2018 repeating the points in his email of 13 March 2018 and adding that he had more than 10 bank accounts in Mauritius and that his lawyer's opinion was that the investigation could only be concerned with the US\$ accounts at Barclays, HSBC and SA Bank.
75. By email of 16 April 2018, the BWF Legal Manager replied explaining the jurisdiction of the BWF and the confidentiality under which the documents would be kept. He noted that the deadline for the production of the documents had now passed.

By email of 30 April 2018, Mr Gaya replied stating he was entitled to have an answer to the questions he had posed in his email of 13 March 2018.

By email of 4 May 2018, the BWF Legal Manager replied once more stating that the deadline had now passed.
76. The BWF instructed a Forensic Accountant, Prem Dass of Navigant, to review the materials obtained in the course of the investigation. His report is dated 14 May 2018 (the "**Dass Report**").

77. The Dass Report:

- a. Analyses the payments made by the BWF to the BCA from 2011 to June 2017. The total sum paid was \$2,532,059 (Section 3)
- b. Considers the BCA's accounts and bank statements and analyses the receipts of the BCA and its payments (Section 4). In summary:
 - i. About 97% of the BCA's funding came from the BWF;
 - ii. The BCA had receipts of about \$2.6M between 2011 and June 2017; and
 - iii. The BCA paid Mr Gaya a total of \$1,098,906 in that same period.
- c. Records that:
 - i. There is no record of any decision of the BCA or MBA to pay monies destined for the MBA into the personal accounts of Mr Gaya;
 - ii. The Spreadsheets that Mr Gaya provided in his interview do not contain the same detail as would be present in the source bank accounts that he had refused to provide, and so these Spreadsheets could not be relied upon to be accurate;
 - iii. The Spreadsheets record funds from the BWF and BCA in US Dollars and do not include any Mauritian Rupee transactions; and
 - iv. The Spreadsheets do not have a useful narrative for withdrawals, with 81% being described as only 'Cash to Me'.
- d. Against those observations, the Dass Report noted that the BWF and the BCA together paid to Mr Gaya according to the Spreadsheets a total of \$1,279,800. The Dass Report reconciled the accounts of the BWF and the Spreadsheets by noting that the BWF paid some monies to both Mr Gaya's Mauritian Rupee accounts and the BCA accounts, with the Spreadsheets again noting that the sum of \$35,827 was paid to accounts of Mr Gaya which had not been included in the Spreadsheets.
- e. In respect of the expenses paid by the BWF, the Dass Report noted that:
 - i. \$173,757 was supported by invoices from 'Nitra Holidays'. Nitra Holidays is not a registered travel agent. Edoe noted that in fact the actual tickets were purchased from Atom Travel by Edoe himself. He also noted that Nitra Holidays appeared to be part of an entity 'Nitra Trading & Engineering', of which 'Nitra Trading' also provided shuttlecocks to the MBA. Finally, and most troubling, the entity was owned by friends of Mr Gaya.

- ii. \$60,162 was unsupported by any documentation
 - f. In respect of the records of MBA 'receipts' and BSA 'receipts' to the BCA, Dass noted that:
 - i. The underlying invoices i.e. the hotel bills, had not been provided
 - ii. The underlying invoices were again absent.
- 78. The Dass Report has analysed the expenditure recorded in the Spreadsheets against the payments known to have been provided to Mr Gaya by the BWF and the BCA. It is obviously to be expected that if the expenses claimed for by Mr Gaya, whether to the BWF or to the BCA, or whether for expenses personally incurred by Mr Gaya, or incurred by Mr Gaya genuinely on behalf of the MBA, that there would be a net position of zero. Expenses should only be paid against expenditure properly and legitimately incurred on actual expenses.
- 79. Instead, Dass found that there was a substantial accumulation of income by Mr Gaya from the monies paid to him by the BWF and the BCA. The excess of income over expenditure had not been explained on the basis of the documents that Mr Gaya himself had produced, whereby he had claimed more in expenses than which he had incurred. The range of this 'expenditure gap' is between \$498,583 and \$277,438 in the period 2011 to June 2017.
- 80. Mr Gaya was interviewed on two occasions. The first interview was conducted on 15 December 2017 but regrettably the recording equipment failed to record it. The second interview was conducted on 4 February 2018 and has already been mentioned in para 70 above. However, during the interview the following key points emerged:
 - a. Mr Gaya admitted receiving monies destined for the MBA from the BCA into his personal account. He gave the purpose of doing so as to avoid the government reducing funding for the MBA.
 - b. Mr Gaya admitted creating the MBA Receipts and sending the letter of 23 March 2016 to Larry Keys of the BCA. He claimed he had also copied the letter to Mungroo.
 - c. Mr Gaya admitted saying that he had used MBA money in his account for African purposes, explaining it was to help small countries with their subscriptions.
 - d. Mr Gaya admitted some of the money allocated by the BCA for a program called "Road to Rio" was used for "other purposes".
 - e. Mr Gaya explained he had spent some monies with Nitra, an entity which sold both air tickets and shuttlecocks, and that Nitra was run by Dev Balloo. Gaya also admitted he had bought shuttlecocks from Sodnac trading which was an entity run by his ex-wife's relative, Bijay Kissondyal.

- f. Mr Gaya disposed of a mass of paperwork in May 2017 because he had nothing to do with the sport of Badminton after May 2017, and so did not have any records of the expenses he made with the monies sent to the MBA.

BWF Allegations

81. In light of what had unfolded during the course of the investigation, the BWF decided to investigate specific instances of expenditure related to the allegations against Mr Gaya.
82. The Road to Rio Fund:
 - a. The BCA allocated a fund of money in the period January 2013 to June 2016 to facilitate badminton players qualifying for the Rio Olympics. The fund was called the "Road to Rio Programme". The BCA allocated \$21,485 to the MBA for that purpose and paid \$19,150 Mr Gaya for that purpose, of which about \$18,000 should have been paid to the Mauritian player Kate Foo Kune.
 - b. Kate Foo Kune states in her witness statement that notwithstanding that allocation, and notwithstanding that money being paid to Mr Gaya, she only received \$1,100 from Mr Gaya for her development as a player for the Rio Olympics. That money was only paid after she was forced to pester him and was paid in cash. In addition, generally Mr Gaya was evasive and did not reveal to Kune that she was due the money from the fund (i.e. it had been allocated to her by the BCA).
83. Shuttle Time:
 - a. In 2015, the BCA allocated \$6,000 to the MBA to allow school teachers to be helped to be trained in the basics of Badminton, and that sum was paid to Mr Gaya's personal bank account for that purpose.
 - b. Annirao Dajee, who was involved in providing coaching for the Shuttle Time programme, said the cost of the programme was only \$1,940.
84. Prize Money
 - a. In 2015, the BCA allocated \$6,000 to the MBA for prize money at the Mauritius International to be held in June 2016 and this sum was paid to Mr Gaya's personal bank account for that purpose.
 - b. Edoe confirmed that those monies were not paid in prize money to the players.

85. Referees Allowances

- a. Between 2011-2016, the BCA allocated \$3,485 to the MBA to pay Mauritian Referees to officiate at International tournaments and that sum was paid to Mr Gaya's personal bank account for that purpose.
- b. Hassenkhan Hyderkhan was such a referee. He did not receive the money allocated to him by the BCA and paid to Mr Gaya. Mr Gaya told him that he would not receive payment for local tournaments in Mauritius, which was not the case.

86. Air tickets and shuttlecocks:

- a. The BCA paid monies to Mr Gaya for shuttlecocks and for air tickets, these were paid against receipts from SODNAC and NITRA to Mr Gaya's account and not supported by detailed invoices.
- b. Ravin Sandrasagen a former President of the MBA supplied shuttlecocks. When he did so to Mr Gaya, Mr Gaya did not seek any receipt and/or Sandrasagen did not provide one.
- c. Zumburani notes that \$6,750 was allocated and paid to Mr Gaya for shuttlecocks, for which the MBA provided only one receipt (an MBA Receipt) for \$1,250.

87. Schools Tournament:

- a. In 2015 and 2016, the BCA allocated \$16,278 in total (\$6,860 in 2015, and \$9,418 in 2016) to the MBA for the All Africa tournaments for schools, these monies were paid to Mr Gaya, but the MBA provided receipts (an MBA Receipt) for only \$11,174.
- b. Edoe discovered that in 2016 the participating schools were also funded from sources other than the MBA.

88. NITRA and SODNAC

- a. The consideration of the validity of the receipts from these entities must be considered against the evidence of Sandrasagen, namely that in April 2018 Mr Gaya approached him by telephone and asked him to provide a backdated invoice for the year 2016 for shuttlecocks, to the value of Rs 85,000, which Sandrasagen had not sold. This is the clearest evidence of Mr Gaya attempting to create false invoices.
- b. Thomas Delaye Fortin has made enquiry of the records of trading entities in Mauritius. His investigations reveal that:
 - i. Nitra is a general trading company and was set up by Balloo Santaram, who is a director of Best Dairy Company Limited. Mr Gaya is also a director and manager of that Dairy Company, and

there is no registration of Nitra working as travel agency or supplier of sports equipment

- ii. Sodnac Trading is a general trading entity set up by Kissondya Betchoo, who is also a shareholder in the Best Dairy Company Limited.

BWF Submissions

89. The BWF submits that in the relevant time period, Mr Gaya, on his own admission, and by the evidence of Pultoo, Mungroo and Nagel, had produced a substantial number of forged documents. The production of a forged document is of itself dishonest. The dishonesty is compounded by the “bare lie” in the letter of 26 March 2016 that the MBA could not receive foreign currency.
90. The general purpose of the forged documents is clear says the BWF. It was to allow funds intended for the purposes of benefitting the MBA and the sport of Badminton in Mauritius to be:
 - a. Paid to Mr Gaya; and
 - b. To be controlled by Mr Gaya without further financial or governance control of the MBA.
91. Once the monies were paid to Mr Gaya he had, on his own admission, used them for purposes other than those that he knew them to be intended to be used for and for purposes other than promoting the sport of Badminton. The purposes he did use those monies for included political purposes.
92. The analysis of the accounting documents reveals that Mr Gaya has claimed more in expenses from the BWF and/or the BCA than he has expended. He has therefore profited from expense claims.
93. The BWF believes there is a clear and obvious conclusion to be drawn that Mr Gaya’s profiting from expenses has been achieved by:
 - a. Not paying monies out to persons who were entitled to those payments or by making excessive claims for expenses for sums never expended; and
 - b. Proving false invoices from connected persons (Nitra and/or Sodnac) or using Nitra and Sodnac to profit from genuine suppliers of services (e.g. Atom or Sandrasagen).
94. Mr Gaya has also created a conflict of interest by using Sodnac and Nitra in his dealings with the BCA and/or BWF.
95. As a bare minimum, Mr Gaya could be expected to have acted honestly and with transparency by producing detailed records of expenses and expenditure with underlying supporting documentation (i.e. actual receipts and records of

expense for air tickets and the like). He has failed to do so, contending, which is not accepted, his records had to be destroyed in May 2017 for the false reason that Mr Gaya was not pursuing any interest in Badminton.

96. Even if Mr Gaya did in fact use the monies properly, he would still have acted dishonestly and without transparency because his proclaimed reason for receiving personal payments was to avoid the Mauritian government removing funding from the MBA, which it is submitted was simply not true. This was deceptive.
97. Those eight submissions made by the BWF individually, if proved on the balance of probabilities, demonstrate that Mr Gaya has acted with a deceptive, dishonest purpose for many years. Cumulatively they establish that he has acted in such a manner to profiteer personally from his dishonest conduct.
98. Lastly, the BWF, referring to Demands a Covered Person has to follow pursuant to Art. 5.11 of the Procedures, submits that Mr Gaya, “has attempted to thwart and prevent investigation into his misconduct by refusing to provide the documents required and properly the subject of multiple Demands by the BWF. Of itself, in the circumstances that Mr Gaya has handled, dealt with and used funds of the MBA for his own purposes, and mixed those funds with his own money, is astounding. Coupled with the evidence of forgery, deception, dishonesty and profiteering, as a whole this is demonstrative of his attempt to conceal misconduct.”

Mr Gaya's Claims in the Interviews with BWF

99. In the interviews conducted on 15 December 2017 and 4 February 2018 Mr Gaya contended that
 - a. He had paid players in cash in envelopes;
 - b. He paid officials in cash;
 - c. He had paid Kate Foo Kune more than \$1100 for the Road to Rio funding, but some money had gone to the MBA for her expenses;
 - d. A grant for a school's fund in 2011 of \$4,500 may have been spent on air fares;
 - e. In respect of allocation of funds by the BCA to the MBA, “When we receive money under item A, B, C D maybe spending it differently could be on item X, Y, Z”;
 - f. He had had bank statements for 2011-2017, and had prepared spreadsheets from them, because he did not want them to go into the press; and
 - g. He used some of the money sent to the MBA to pay for hotels for African visitors to tournaments in Mauritius.

D. FINDINGS

100. While the Panel has carefully considered all the facts, evidence, allegations and arguments submitted by BWF in writing, the Panel refers in these findings only to the submissions and evidence it considers necessary to explain its reasoning.

Right to be heard

101. The Panel has done its utmost to ensure that Mr Gaya receives BWF's submissions, as well as the letters from the Panel, so that he was given the fullest opportunity to respond and exercise his right to be heard. The Panel states that Mr Gaya – after initially participating in the BWF's investigation - refused to respond.

102. The Panel has examined in detail, and relied upon, the numerous written witness statements submitted by the BWF.

Governance Concerns

103. Reading the details of this case, the Panel would first like to state that the lack of Good Governance in respect of the financial affairs by all sport organisations, mainly the MBA and BCA, but also the BWF, has fallen well below recognised best practice and standards. Over a long period of time, no appropriate robust system for keeping an audit trail of the allocation and use of funds has been in place.

104. Accepting and – even after doubts have been raised – upholding payments of considerable sums into a private bank account demonstrates a fundamental lack of diligence.

105. Additionally, the accumulation of power in one individual within a sport in a particular region, i.e. Mr Gaya's multi-functions in MBA, BCA and BWF, should have led to even more scrutiny and represents a lack of understanding of the key governance principle of conflict of interest.

106. Taking into account that cases of corruption and fraud in international sport have been prominently in the media since at least the scandals surrounding FIFA and IAAF, i.e. since 2011/2013, there is no excuse for the naivety shown here, especially after the first signs of wrongdoing had become apparent.

107. Given this situation, and the reluctance of the Respondent to attend a hearing and to answer to the BWF's charges, the Panel focuses in its decision on the damage to the reputation of Badminton and sport on the whole caused by Mr Gaya. The Panel does not see it as its obligation to make a decision on every single charge / instance of alleged misconduct submitted by the BWF.

108. In the Panel's view it is up to the BWF, BCA and MBA to chase the money and see whether there is any chance of being compensated by going to the state courts.

Main Facts from the Witness Statements

109. The witnesses Mungroo (MBA President from 2013 – 2017) and Pultoo (Secretary General of MBA since 2013) both confirm in their written witness statements that – as alleged by BWF - several letters bearing their signature were forged. They also describe how over a number of years Mr Gaya managed to have money intended for Badminton related purposes paid into his personal bank account.
110. Herman Nagel, the COO of the BSA, in his witness statement confirms that three letters allegedly sent by him in July 2015 to BCA as financial claims are faked. He explains in detail that this can be seen as there is no reference number and the phrase "Yours faithfully" is used, which he claims he never uses.
111. These letters had been produced by Mr Gaya when BSA asked for confirmation of monies that BCA had sent to BSA, as confirmed by Zumburani, the BCA treasurer since April 2014, in her witness statement.
112. Zumburani also states that after becoming treasurer she realized that there was no formal accounting system and payments had been going directly to Mr Gaya's and another person's personal accounts.
113. Zumburani continued with this practice, i.e. paying money dedicated to support the sport of Badminton in Mauritius into Mr Gaya's personal account, and did not talk to anybody else from MBA after Mr Gaya had told her that he is the only international contact for the MBA.
114. For the Panel it is difficult to imagine this way of financial administration.
115. Sahir Edo, BCA Operations Manager since January 2016 and Acting Secretary General since June 2017, in his witness statement notes that he found the payments to Mr Gaya's personal bank account "very strange and could not understand why and how the BCA gave so much power for one person".
116. Hassenkhan Hyderkhan, a Badminton referee from Mauritius, refereeing as well on the international level, confirmed in his witness statement that he received no payments for officiating in six international tournaments in Mauritius between June 2011 and June 2015, whereas in other countries he was paid at least 100 USD per day when acting as a referee.
117. Hyderkhan also states that when he asked Mr Gaya for a reason for not being paid when refereeing in Mauritius, the answer was "When you do tournaments locally in Mauritius you are not paid." Hyderkhan later learned that money allocated was also to be used by the MBA to pay referees in international tournaments in the country.
118. Kate Foo Kune, a professional Badminton player from Mauritius, describes in her witness statement that she received only two cash payments from Mr Gaya – 600 USD 2015 at the South Africa International and 500 USD 2016 at the

Olympic Games in Rio – after she had asked him repeatedly about money to be paid to her from the "Road to Rio Programme". She confirmed that there were no additional payments to her from this programme. Her report on how she found out that there should be more money transferred to the MBA for supporting her, and how she even tried in a meeting to force Mr Gaya to be transparent, is a good example of an athlete fighting for her rights. This is supported by Sahir Edo, who also remembered Kate Foo Kune asking Mr Gaya for the Road to Rio Programme.

The Panel's Findings as to the Merits

119. Given these witness statements and the documents produced by BWF the Panel has no doubt that, orchestrated by Mr Gaya, over a considerable amount of time, money intended for Badminton purposes was paid into his personal bank account. This in itself is not acceptable for an official in charge of the administration of any sport organization.
120. The Panel states that Mr Gaya has not produced comprehensive robust receipts, nor given a reasonable explanation how the money was used. His statements in the interview do not meet the requirements of documentation on payments.
121. This conduct of Mr Gaya led, among other possible shortcomings, to MBA funds not being spent for sporting purposes, and to a referee and an athlete being deprived of financial support for their engagement in the sport of Badminton. Thus those who should be in the centre of the care of a sport official have been betrayed.
122. In the Panel's view Mr Gaya's behaviour has significantly damaged the sport of Badminton.
123. There is no other conclusion than that Mr Gaya has acted with a deceptive, dishonest purpose to serve his own financial interest, which has gone on over a prolonged period.
124. In the Panel's view, the BWF has fulfilled its burden of establishing that a violation has been committed on the balance of probabilities, in that it is more likely than not that the breaches of the relevant BWF Code have occurred.
125. The Panel has also taken note of the fact that no one interfered and therefore the opportunity for Mr Gaya to act like he did was substantial. This, too, has to be taken into account when taking a decision in this case.
126. The BWF Statutes and additional regulations since 2011 have always been clear that *"Anyone who deals with the Federation and /or shares in its activities in any capacity, notably those referred to in Clause 32, commits themselves by their actions to behave in a correct and ethical manner."*
127. Mr Gaya has continuously not acted in a correct and ethical manner.

128. Additionally, in the end, he even refused to cooperate with the BWF's investigation, despite the related obligation in the BWF Judicial Procedures. By not responding to the Panel's letters in this case, Mr Gaya showed that even now he is not willing to take over responsibility.

Sanction

129. According to clause 16 of the BWF Judicial Procedures the following sanctions may be imposed:

- "16.1.1 Reprimand;
- 16.1.2 Exclusion or suspension;
- 16.1.3 Disqualification;
- 16.1.4 Ban from competition or from performing a function;
- 16.1.5 Removal of ranking points;
- 16.1.6 Return of awarded prizes;
- 16.1.7 Withdrawal of sanction;
- 16.1.8 Fine;
- 16.1.9 Any combination of these penalties, including a combination of an Administrative Fine or other appropriate measure agreed by the Council.
- 16.2 If appropriate, the Hearing Panel concerned may recommend payment of money as financial compensation against those (in particular BWF Members, clubs, associations, players, officials) who have behaved in a negligent or inappropriate manner that has caused financial loss or damage to another party.
- 16.3 Any suspension is from all competitive events for such time as is seen fit, including possibly for life.
- 16.4 Any fine imposed on a Covered Person shall be notified to the Member to which the person belongs that shall have the responsibility for submitting payment to the BWF, within 60 days from the date of that notification.
- 16.5 Penalties related to Elected Officials can include suspension of Council membership for a period, and/or dismissal from Council. Where the penalty is dismissal from Council, Council (other than anyone charged with an offence) votes on the penalty. A simple majority in favour confirms the penalty, while failure to secure a majority causes the penalty to be reconsidered by the relevant Hearing Panel and a new penalty proposed."

130. For all the aforementioned reasons detailing the scale of Mr Gaya's misconduct and wrongdoing, the Panel sees a life ban from all activities within the sport of Badminton as being the only appropriate and proportionate sanction.
131. Given the financial harm caused, especially to Hassenkhan Hyderkhan and Kate Foo Kune, a fine of US\$50,000 has to be imposed. According to clause 16.2 of the Procedures, the Panel recommends that out of this amount of US\$50,000:
- a) US\$600 is to be paid to Hassenkhan Hyderkhan, as he did not receive daily payments for six international tournaments in Mauritius between 2011 and 2015 (see para 85 and 116 above); and
 - b) Another US\$5,000 is to be paid to Kate Foo Kune as she only received US\$1,000 from the Road to Rio Programme but was due up to US\$18,000 (see para 82 above).

Costs

132. Having heard no submissions on costs, the Panel orders that the parties are to bear their own legal and other costs in relation to the proceedings.

E. DECISION

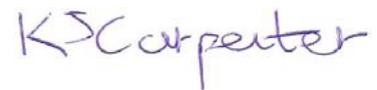
1. Raj Gaya is banned from performing any function in Badminton for life.
2. a) Raj Gaya is ordered to pay a fine of US\$50,000.
b) Out of this amount of US\$50,000 US\$600 is to be paid to Hassenkhan Hyderkhan and US\$5,000 to Kate Foo Kune by BWF.
3. The parties are to bear their own legal and other costs with respect to the proceeding.



Annabel Pennefather



**Sylvia Schenk
(Chair)**



Kevin Carpenter