

CAS 2012/A/2979 World Anti-Doping Agency (WADA) v. Nirupama Devi Laishram & National Anti-Doping Agency of India (NADA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Conny Jörneklint, Chief Judge in Kalmar, Sweden

Arbitrators: Mr Mark Hovell, Solicitor in Manchester, England

Justice Mukul Mudgal, Former Chief

Justice Punjab and Haryana High Court, India

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland

Represented by Mr Olivier Niggli and Mr Ross Wenzel, Carrard & Associés, Lausanne, Switzerland

Appellant

vs.

Nirupama Devi Laishram, Manipur, India

Represented by Mr Anish Dayal, Attorney-at-Law in Uttar Pradesh, India

First Respondent

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

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency (the "Appellant" or "WADA") is a Swiss private law Foundation. Its seat is in Lausanne Switzerland, and its headquarters are in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
2. Ms. Nirupama Devi Laishram (the "Athlete" or the "First Respondent") is an athlete affiliated to the Judo Federation of India. The Athlete is an International-Level Athlete and was born on 31 October 1985.
3. National Anti-Doping Agency of India (the "NADA" or the "Second Respondent") is the national organization of India responsible for promoting, coordinating, and monitoring the doping control programme in sports in all its forms in the country.

II. FACTUAL BACKGROUND

4. Further to an In-Competition test performed on a urine sample provided by the Athlete at the Senior Judo Championship in Kolkata on 11 January 2012 (the "Event"), both the A-sample and B-sample tested positive for methylhexaneamine. The Event was not an International Event.
5. Methylhexaneamine (dimethylpentylamine) is a prohibited substance, which is classified under "S6 (b)" (Specified Stimulants) on the 2012 WADA Prohibited List. It is prohibited in-competition.
6. The Athlete was notified of the positive test on 18 April 2012.
7. A hearing was held before the Anti-Doping Disciplinary Panel of India (the "ADDPI") on 12 July 2012. Both the Athlete and NADA were represented at this hearing.
8. The ADDPI rendered a written decision on 17 July 2012 (the "First Instance Decision"). The First Instance Decision sanctioned the Athlete with a reprimand and no period of ineligibility in respect of her anti-doping rule violation.
9. NADA Appealed the First Instance Decision to the Anti-Doping Appeal Panel (the "ADAPI") who confirmed the First Instance Decision and dismissed NADA's appeal on 10 September 2012, ("the Appealed Decision"). It is the Decision which is the subject of the present appeals proceedings.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 12 November 2012, WADA filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") requesting it to rule:
 - “1. *The Appeal of WADA is admissible.*
 2. *The Decision by the ADAPI is set aside.*

3. *The Athlete is sanctioned with a two-year period of ineligibility starting from the date on which the CAS award enters into force and that any ineligibility period shall be credited against the total period of ineligibility to be served.*
 4. *All competitive results obtained by the Athlete from 22 October 2010 through the commencement of the applicable period of ineligibility shall be annulled.”*
11. On 22 November 2012, WADA filed its Appeal Brief and Exhibits with the CAS.
 12. On 22 December 2012, the Athlete submitted her Answer. The Athlete asked for the following relief:
 - “1. *The Appeal of WADA be dismissed.*
 2. *The Decision of ADAPI of a reprimand and no period of ineligibility be upheld.*
 3. *Any other order the Panel may so decide.”*
 13. The Second Respondent did not file an answer in this appeal. However, it did provide a copy of the case file associated with the Appealed Decision.
 14. By letter dated 20 February 2013, the CAS informed the parties that the Panel responsible to hear the present appeal had been constituted as follows: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden, as President; Mr Mark Hovell, Solicitor in Manchester, England as Arbitrator appointed by the Appellant; and Justice Mukul Mudgal, Former Chief Justice Punjab and Haryana High Court of Delhi, India, as Arbitrator appointed by the Athlete and the Second Respondent. The parties did not raise any objection as to the constitution and composition of the Panel.
 15. Since none of the parties had requested the holding of a hearing, and after having reviewed the CAS file, the Panel decided, in accordance with Article R57 of the Code of Sports-related Arbitration (the "CAS Code"), to issue an award on the basis of the parties' written submissions and to replace the holding of a hearing by final written observations. Consequently, the Appellant and Respondents were given the opportunity to file their final observations on 27 June 2013.
 16. The parties explicitly agreed to these arrangements by signing the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. THE APPELLANT'S SUBMISSIONS

17. In summary, the Appellant submitted the following in support of its appeal:

Admissibility

Applicable rules

18. The Appealed Decision was rendered by ADAPI on the basis of the NADA Anti-Doping Rules and, more particularly, the version of such rules which became effective on 1 January 2010 (the "NADA ADR").
19. The NADA ADR were therefore applicable to the present case.

WADA's Right of Appeal

20. According to article 13.2.2. NADA ADR:

"In cases involving national-level Athletes, that do not have a right to appeal under Article 13.2.1, the decision may be appealed to the Anti-Doping Appeal Panel."
21. As neither the Athlete nor the Event were "international" for the purposes of the NADA ADR, the appeal by NADA to ADAPI against the First Instance Decision was lodged on the basis of article 13.2.2 above.
22. Article 13.2.3 of the NADA ADR further provided that:

"For cases under Article 13.2.2, WADA and the International Federation shall also have the right to appeal to CAS with respect to the decision of the Anti-Doping Appeal Panel."
23. WADA was explicitly listed as one of the persons having a right of appeal against decisions of ADAPI, such as the Appealed Decision.

Compliance with the deadline to appeal

24. The final paragraph of article 13.2 of the NADA ADR provides that:

"The filing deadline for an appeal or intervention filed by WADA shall be the later of:
 - (a) *Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
 - (b) *Twenty-one (21) days after WADA's receipt of the complete file."*
25. WADA received documents pertaining to the case file of the Appealed Decision on 4 October 2012 and 22 October 2012. But WADA reserved its rights to file its appeal on the basis that the documents it received did not include the entire case file. However, even assuming that WADA had received the full case file on 22 October 2012, this appeal was still filed in a timely fashion.

Anti-Doping Violation

26. Article 4.1 of the NADA ADR states:
- "These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code."*
27. As set out above, methylhexaneamine (dimethylpentylamine) was a prohibited substance, which was classified under "S6 (b)" (Specified Stimulants) on the 2012 WADA Prohibited List. It was a specified substance and prohibited in-competition.
28. The Athlete ultimately did not challenge the presence of the prohibited substance in her bodily sample within the context of the proceedings before ADAPI.
29. The presence of the prohibited substance in the bodily sample of the Athlete was therefore established.
30. Consequently, the violation by the Athlete of Art. 2.1 of the NADA ADR (presence of a prohibited substance or its metabolites or markers in an athlete's sample) was established.

Athlete's Explanations

31. In the Reply/Statement by the Athlete before the ADDPI, the Athlete submitted that she was (at the time of the positive test) using the following VLCC Products:
- VLCC- Shape Up, Hips, Thighs & Arms shaping Oil and Gel
 - VLCC- Geranium and Grapefruit Anti-Aging Natural Bathing Bar
 - VLCC- Skin Tightening Geranium Face Pack
32. In the Athlete's Statement, the Athlete submits that: (i) geranium oil was "*a natural source of Methylhexaneamine*"; (ii) "*the Methylhexaneamine must have been caused due to the use of beauty products*"; and (iii) "*the substance found in the body of the Athlete can in no way improve her performance.*"

Determining the Sanction

General

33. The standard period of ineligibility for a violation of article 2.1 NADA ADR was two years (article 10.2 NADA ADR).
34. Pursuant to article 10.5 of NADA ADR, an athlete can establish that, in view of the exceptional circumstances of his/her individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1) or reduced (in case of no significant fault or negligence as per article. 10.5.2).

35. With respect to specified substances, article 10.4 of the NADA ADR provided for a reduction or elimination of the period of ineligibility in circumstances where the athlete can demonstrate that he/she did not intend to enhance his/her sport performance.
36. In order to benefit from a reduction or elimination of the period of ineligibility under any of articles 10.5.1, 10.5.2 or 10.4 NADA ADR, an athlete must first establish the origin of the prohibited substance in his/her system.

Origin of the prohibited substance in the Athlete's bodily specimen

37. On the basis of the information available to WADA at the date of the Appeal Brief, WADA submitted that the Athlete had failed to establish on the balance of probabilities that she was using the VLCC Products at the relevant time. In particular, WADA had not seen proof of purchase of the VLCC Products by the Athlete.
38. Even if the Athlete was able to satisfy the Panel that she was indeed using the VLCC Products at the relevant time, such products cannot (for the reasons set out below) be the source of the prohibited substance in her system.
39. The VLCC Products may contain geranium oil as one of their ingredients. However, recent studies have established that geranium oil does not in fact contain methylhexanamine.
40. Furthermore, the manufacturer had confirmed to WADA that the VLCC Products do not contain methylhexanamine.
41. Moreover, NADA has tested all three VLCC Products; the test results confirmed that the VLCC Products do not contain methylhexanamine.
42. Finally, even if the VLCC Products used by the Athlete did contain methylhexanamine (e.g. as a result of a contamination), it is "*extremely unlikely*" that the concentration of methylhexanamine detected in the Athlete's sample could have resulted from cutaneous absorption. It must be recalled that once adjusted for specific gravity, the Athlete's sample revealed an extremely high concentration (10,000 ng/mL).
43. Notwithstanding the contention of the Athlete in the Athlete's Statement, the concentration of methylhexanamine found in the Athlete's sample would have been sufficient to improve her athletic performance.
44. One can conclude in light of the above that the methylhexanamine found in the Athlete's sample did not result from the Athlete's use of the VLCC Products (even assuming that she did in fact use the same).

Conclusion

45. Regardless of whether or not the Athlete was able to establish that she did use the VLCC Products, she has failed to establish the origin of the prohibited substance in her system, and must be sanctioned with a minimum two year period of ineligibility.

B. THE ATHLETE'S SUBMISSIONS

The Athlete submitted the following in her defence:

Factual background

46. In summary, the Athlete accepted the Appellant's description of the factual background with the following additions:
47. By an application dated 20 April 2012, the Athlete voluntarily applied for and accepted provisional suspension as per the provisions of article 10.9.6 of the NADA ADR.
48. An application was filed by the Athlete on 20 April 2012 for the complete Laboratory Documentation Package. The Athlete received the Laboratory Documentation Package on 10 May 2012.

Proceedings before the ADDPI

49. The Athlete received a notice dated 19 April 2012, from NADA informing her of the date of hearing to be on 7 May 2012 before the ADDPI. The Athlete filed her reply and submissions before the ADDPI, and argued that she had not ingested anything that could be the source of the methylhexaneamine in her body, and that the most probable source could be the body products she used over a long period of time, which happened to contain geranium, and thus explaining the source for the presence of methylhexaneamine.
50. It was the opinion of the ADDPI that these products are not available in the open market and could only be obtained by enrolling in the VLCC courses. The Athlete was asked to provide evidence that these were available from the open market; hence she purchased these products from various shops in Delhi and presented them before the ADDPI with the bills and receipts from those shops.
51. The Athlete had also produced certain medical literature ["Comprehensive Dermatological Drug Therapy" by Stephen E. Wolverton, MD] to show that percutaneous absorption does take place under certain circumstances. The literature, inter alia, also mentioned the conditions under which the absorption would increase and how substances would show up in the urine. Such conditions for higher possible absorption included, inter alia, the surface area on which the substance was applied, the duration, nature and periodicity of application, (e.g. during a bath when there was a high humidity). With these conditions there would be increased absorption. The vehicle through which the substance entered also may increase absorption (e.g. ointments, creams, gels and lotions). It was argued before the ADDPI that the Athlete had been using these products for a number of years, and had been applying these products on a regular basis in large quantities. Since these involved extensive use on the body (as with the Shape Up, Hips, Thighs & Arms shaping Oil & Gel) and on the face (as with the face pack) for acne, in accordance with the literature produced, there was a cause for higher absorption.

52. On 12 July 2012, the ADDPI heard the final arguments of both parties, and served its order which was delivered on 17 July 2012. The ADDPI issued a sanction of a reprimand with no period of suspension under article 10.4 of the NADA ADR. Hence the ADDPI was satisfied that the Substance entered the body through the products thus produced and that the substance was not intended to enhance the sport performance of the Athlete.

Proceeding before the ADAPI

53. NADA filed an Appeal before the ADAPI against the decision of the ADDPI dated 17 July 2012.
54. The contention in the Appeal was that the Athlete was unable to show that the Substance entered her body from the named products and that the products that listed geranium as an ingredient did not contain methylhexaneamine.
55. The contentions of NADA were not accepted by the ADAPI, inter alia, since these contentions were not raised before the ADDPI and that the stance taken by NADA regarding geranium not being a source for methylhexaneamine was totally contrary to the basic stance of WADA and NADA on geranium and methylhexaneamine, as published and publicised on their websites.
56. The ADAPI was satisfied with the explanation provided by the Athlete as the most reasonable one possible and also that the Athlete did not use the products to enhance her sporting performance.
57. Thus by an Order dated 10 September 2012, the ADAPI dismissed NADA's Appeal, and upheld the decision of the ADDPI.

WADA's stance on geranium

58. WADA in its Explanatory Notes on the 2011 Prohibited List dated 18 September 2010 under S6 Stimulants mentions that methylhexaneamine is *"now often marketed as a nutritional supplement and may frequently be referred to as 'geranium oil' or 'geranium root extract'."*
59. It is thus the stance of WADA that products that list geranium as one of its ingredients does contain methylhexaneamine, and hence could result in a positive test.

NADA's stance on geranium

60. NADA has followed the principles of WADA and around January 2012 (as explained by NADA) put up a warning on their website stating that various products contain methylhexaneamine, and that some of those products list Geranium oil extract, Geranium extract, and geranium as its ingredients. This establishes that NADA believed that products containing geranium, or its oil and extracts, contain methylhexaneamine.
61. NADA also accepted that this information was put up on the website after the Athlete tested positive, thus the Athlete had no information or clear warning available to her that a geranium based product including that of a beauty product, could result in a

prohibited substance entering her body. It was also pleaded before the ADDPI that the Athlete was using these products over a long period of time which could have been the reason for a large enough absorption to give a positive result.

62. NADA's website includes a warning list of brands that could contain prohibited substances. This list mentioned methylhexaneamine, but did not list any brand against it as containing methylhexaneamine. The Athlete, therefore, had never been sufficiently warned over the last few years about any substance that may contain methylhexaneamine. It was only in the recent notice in 2012 put up on NADA's website that the warning for methylhexaneamine and geranium became visible.

WADA's stance on methylhexaneamine

63. WADA included methylhexaneamine on the list of Specified Substances in the 2011 Prohibited List and the Q&A to the 2011 Prohibited List.. At the same time, WADA identified methylhexaneamine as a substance that reappeared in various nutritional supplements, and was therefore subject to *"potential inadvertent use by athletes."* It further mentioned that *"Specified Substances are substances that are more susceptible to a non-doping explanation."*
64. In WADA's Q&A on the 2012 Prohibited List,, the link between geranium and methylhexaneamine stated that *"methylhexaneamine (MHA) is a pharmacological substance classified as a stimulant that was commercialized up to the beginning of the seventies. MHA reappeared a few years ago as a constituent of dietary supplements sold freely on some markets or on the Internet."* It also mentions that *"Athletes should be aware that MHA has been made available under several names, one being geranium oil."*
65. It was thus the stance of WADA that Methylhexaneamine was freely available in the markets and that it could be present in the athlete's body without the athlete's knowledge of how the substance entered the body.

Stance of various Anti-Doping Agencies worldwide and CAS on methylhexaneamine

66. Various Anti-Doping Agencies around the world have taken a lenient stance towards methylhexaneamine due to its inadvertent use by Athletes. In most cases, the sanctions extend from a mere reprimand to a maximum of 6 months.

In a chart, the Athlete referred to ten cases from FINA, one from CAS concerning football, and one from SARU concerning rugby.

The Athlete's previous performance and tests

67. The Athlete was an international-level Judoka who has represented India in various international events since 2002, and also has won various laurels for her country. She had been tested various times since 2002.. She was naturally a 'clean' athlete who was capable of excellent performances without using Prohibited Substances. This was the first time that she tested positive in her long career as an international Judoka. It can thus be reasonably inferred that the substance was not intended to enhance her performance, as keeping her track record she would not have any motivation to do so.

Reply to the contentions raised by WADA

68. It was an incorrect submission made by WADA that the Athlete failed to establish on a balance of probability that she was using the VLCC products at the relevant time. It was well established to the satisfaction of the ADDPI that the Athlete was using the VLCC products so mentioned for over a long period of time and had also produced before the ADDPI products that she was using at that time. Since the products so used were for cosmetic purposes, and they were freely available in the markets, the Athlete did not find it relevant to save the bills and receipts of the same. And, a proof of purchase can only be established by producing the said products in use. She had instead produced the products that she was using at that time before the ADDPI, and the ADDPI was satisfied with the fact that the Athlete was actually using the said products.
69. WADA, in its own Appeal, contradicts its own stance that it had taken in respect to geranium and methylhexanamine. WADA's own website states the relation between geranium and methylhexanamine in the Q&A on the 2012 Prohibited List as well as the 2013 Prohibited List. It states "*Athletes should be aware that MHA has been made available under several names, one being geranium oil.*" Thus WADA admits that methylhexanamine is available under the name of geranium.
70. It was also submitted that WADA itself has been changing its stance on methylhexanamine and geranium over the years. In 2011 WADA had transferred methylhexanamine to the Specified Substance list as the substance was available freely in the markets and was subject to potential inadvertent use by athletes, and that these substances are more susceptible to a non-doping explanation. It is therefore stated that WADA itself acknowledges the peculiar nature of methylhexanamine, and its presence in everyday products, and therefore ought to take a lenient stance.
71. WADA in its Appeal Brief also stated that "VLCC has confirmed that their products do not contain methylhexanamine." The test results cannot be relied upon since they have been submitted by the manufacturer who seemed to be now suddenly aware that geranium was a substance in question by doping panels and therefore their commercial interests were directly affected by it. The manufacturer had a direct conflict of interest in the matter and it was obvious and natural that the manufacturer would not voluntarily claim that any Prohibited Substance was present in their products. Reliance may not be put on the statement of the manufacturer. Besides the test reports show that the samples to the testing laboratory were provided by the manufacturer VLCC themselves, and the sampling was not done by the laboratory. This also threw a considerable doubt on the authenticity of the test. Further the Athlete had been using the products for many years and the actual product had not been tested but rather some unidentified samples of the products were provided by the manufacturer to a private testing laboratory to test. This did not result in authentication of the result, as was being claimed by WADA.
72. Without prejudice to the same, the tests conducted were on the products itself that contain geranium. It may be stated here that the positive result was due to the urine sample of the Athlete. The manufacturer in its test has failed to verify if the urine sample of a person using the product for over four years would contain methylhexanamine. It was submitted before the ADDPI by the Athlete that these products were

being used by the Athlete for a long period of time. The medical literature on percutaneous absorption that was also presented before the ADDPI, which showed that absorption of various substances are dependent on the period of use, on the vehicle in which it was used, and also along with the surface area of application and conditions under which it was applied. The literature clearly showed that high humidity and hot water were responsible for a higher absorption, as in the case of the bathing bar being used by the Athlete.

73. WADA relied on the statement of Dr. Irene Mazzoni, who in her statement did not mention that the Athlete was using these products for a very long time; for around four years. This could also be a cause of the positive result as well. It was also submitted that Dr. Mazzoni was the Research Manager employed by WADA, who are the Appellant and the Prosecuting party in the present case and thus undue reliance may not be placed on such findings.
74. The Appellant in its own scientific material produced before this Panel in the material titled "Studies of Methylhexaneamine in supplements and Geranium oil" had mentioned in its conclusion that *"the use of the name geranamine for this compound appears to have been a marketing ploy which has resulted in a large number of athletes returning adverse findings"*. Thus WADA itself did not deny that the products labelled with Geranium, Geranium root extract, geranamine, Geranium oil, Geranium oil extract etc. did indeed contain methylhexaneamine.
75. The scientific material thus produced by WADA all relied on the cutaneous absorption of 'Essential Oils', but they did not mention the vehicle of application. The Athlete was not using geranium in the form of pure oil, but was using the products mentioned above with different vehicles, such as gels. The medical literature presented before the ADDPI states that absorption depends on the vehicle and the form in which the oil was being used. The fact that the products so used were in the form of a bathing bar, gel, cream, and face pack could be the cause of an increased absorption. It was also submitted before the ADDPI that the Athlete had acne on her face where she was applying the face pack and bathing bar amongst others, which could also be the cause of a high absorption.
76. The medical literature and particularly section on Pharmacokinetics and Pharmacodynamics clearly state that cutaneous absorption variables, in addition to others, included skin variables and diseased skin variables, It may be difficult to determine the exact process and reason why the absorptions may have been higher. But from a perusal of the literature, it showed that in case of the Athlete, her consistent use (over large surface areas of the body) of gels, soaps, and creams containing geranium can be reasonably inferred to be more than a probable cause for the presence of methylhexaneamine in her body. This needed to be appreciated in conjunction with the fact that the Athlete had not taken anything else which would be a more obvious and probable source of the methylhexaneamine. In any event, the benefit of the doubt should be given to the Athlete where scientific literature does not provide clear (or absolute) answers regarding the context of absorption; and the prolonged used of the products. It was further submitted that even the medical literature and articles filed with the Appeal Brief would show that single constituents of oils may enter into the body through various possible mechanisms and that permeability of the skin and the method of use

determined the nature and extent of such absorption. It cannot thus be argued by WADA that such absorption was impossible and the explanation submitted by the Athlete is totally vague and absurd.

77. The Athlete has attempted to use whatever limited resources available at her command to show on more than a balance of probability that her extensive use of such products could be the source of the methylhexaneamine. The Athlete did not have the financial resources to produce an expert in this regard nor carry out sophisticated laboratory tests for the same.
78. The ADDPI as well as the ADAPI were satisfied with the explanation provided by the Athlete and thus sanctioned with a reprimand and no period of ineligibility under article 10.4 of the 2010 NADA Rules. The Athlete had to successfully show how the substance entered her body and that it was not intended for enhancing her performance. The Panels had accepted the explanation of the Athlete as the most probable and using the balance of probability, had no doubt that the substance had entered her body through the products so mentioned. The products being cosmetic in nature, would therefore be of no benefit to the Athlete in enhancing her sports performance.

Principle of Proportionality

79. CAS should apply the principle of proportionality in this present case as the Athlete was not aware that the application of cosmetics would cause a positive result and thus had no fault in the Adverse Analytical Findings.
80. Various Anti-Doping Organisations as well as the CAS in matters regarding methylhexaneamine has given a reduced sanction due to the nature of the substance and its availability in the open markets in various products. The ADDPI as well as the ADAPI has rightly held that the Athlete was not at fault for the positive test and that the substance was not intended to improve her sport performance. Thus, using the principle of proportionality, the ADDPI and ADAPI reprimanded the Athlete without imposing any period of ineligibility.

Principle of *Lex mitior*

81. Since 2010, WADA has had various different stands on the issue of methylhexaneamine and geranium. The substance was introduced in the 2010 Prohibited List and then moved into the Specified Substance list due to the nature and availability of the substance. WADA, on its own, had stated that geranium was a natural source of methylhexaneamine; then recently changed its views. It would not be unreasonable to assume that WADA may change its stance in the future as well upon some further new scientific research. It would by then have already caused irreversible prejudice to the Athlete. This would be particularly unfair to athletes who might have a non-doping explanation as in this case.
82. WADA had taken a stance that geranium was a natural source of methylhexaneamine and that many athletes test positive due to the potential inadvertent use. NADA, after the athlete was tested, had put up on its website that Methylhexaneamine is marketed under geranium and thus warned athletes of the same.

83. Thus, the principle of *Lex mitior* should be applied in this case as WADA had only recently, and after the Athlete tested positive, changed their stance on geranium not containing methylhexaneamine. WADA has itself been advocating reduced sanctions on athletes who provide a probable non-doping explanation to the adverse findings. Accordingly, the Athlete should get the benefit of the principle of *Lex mitior* due to the nature of the substance, and that she did not intend to use the substance for enhancing her sport performance, and also the stance taken by WADA and NADA at the time the Athlete was tested.

Sanction imposed on the Athlete

84. It was submitted that in the event this Panel does decide that a period of ineligibility should be imposed on the Athlete, notwithstanding these submissions, it was humbly requested that the period of ineligibility commence from the date of the positive test and giving credit to the period of voluntary provisional suspension already served by the Athlete. It is brought to the notice of this Panel that the Athlete had voluntarily served a period of provisional suspension since 20 April 2012 via an application duly served on NADA on the said date. This suspension was valid till the date of decision of the Disciplinary Panel on 17 July 2012.

C. THE SECOND RESPONDENT'S SUBMISSIONS

85. The Second Respondent remained silent during the present proceedings but has answered questions from the Panel according to the timeline of the case in ADDPI and ADAPI in the following way:
1. The ADDPI has passed an order in case of Ms. Nirupama Devi on 17 July 2012 for a reprimand with no period of ineligibility.
 2. The above decision (but not the full case file) was communicated to WADA and other parties on 18 July 2012 by post.
 3. The ADAPI upheld the decision of ADDPI by its order dated 10 September 2012.
 4. The above order was communicated to WADA and other parties on 13 September 2012 by post and further documents relating to the file were sent to WADA on 4 October 2012 by email.
 5. Further to a request by WADA, additional documents (in particular, exhibits relied on by NADA in its appeal against the 17 July 2012 decision which had not previously been sent to WADA) were communicated to WADA on 22 October 2012 by email.

V. WRITTEN EVIDENCE

86. The Appellant referred to an e-mail from Mr Prerna Arun, DGM – PR & Corporate Communications, VLCC Health Care Ltd, in which Mr Arun stated the following:

“Regarding your query as to whether VLCC Shape Up, Hips, Thigh & Arms Shaping Oil and Gel, VLCC Geranium & Grapefruit Anti-Ageing Natural Bathing Bar and VLCC Skin Tightening Geranium Face Pack contain Natural Geranium Oil, we can confirm the same.

We can also confirm that these products do not contain MHA.

The dosages of all ingredients in these products, including Geranium Oil, have been approved by the concerned licensing authority (Director - Ayurveda, Government of Uttarakhand, India).

It may also be noted that the Geranium Oil used by VLCC is tested for purity by Gas Chromatograph (GC).

Furthermore, all the above mentioned products have also been tested negative for MHA content by approved third party Test lab (Shri Ram Institute For industrial Research, Delhi, India).”

87. The Appellant also referred to a written statement of Dr. Irene Mazzoni, Senior Manager, WADA Science in which Dr Mazzoni states the following.

“I have been employed by WADA as its Research Manager since April 2005 and since July 2012 as Senior Research Manager at the Science Department. My qualifications include a Licentiate in Chemistry with a major in Clinical Biochemistry and a Ph.D. in Neuroscience. Before WADA, I worked at the biotechnology sector in research and development of new drugs and clinical diagnostic methods. As part of my duties at WADA, I am in charge of providing scientific support in the revision, preparation and application of the List of Prohibited Substances and Methods, the assessment of the prohibited/permitted status of drugs and methods as well as the management of WADA's Research Program and follow-up of WADA-funded projects.

My statement is requested by WADA with respect to the case of Ms. Nirupama Devi Laishram ("the Athlete") who, on 11 January 2012, tested positive for methylhexanamine a stimulant clearly named as a prohibited substance under section S6b of the 2012 List of Prohibited Substances and Methods.

Case of Ms. Nirupama Devi Laishram

My interpretation is based upon the following data:

- a. *Methylhexanamine was detected in the Athlete's sample at a concentration of 2000 ng/mL, (2 µg/mL), as estimated by the WADA-accredited National Dope testing Laboratory in New Delhi, India. The specific gravity of the Athlete's urine sample was 1.004.*
- b. *The Athlete explained that her positive test for methylhexanamine was caused by the use of the following aesthetic products manufactured by the company "VLCC" and containing geranium oil:*
 - i. *VLCC Shape Up, Hips, Thigh & Arms Shaping Oil and Gel;*

ii. VLCC Geranium & Grapefruit Anti-Ageing Natural Bathing Bar; and

iii. VLCC Skin Tightening Geranium Face Pack.

Link between geranium oil and methylhexaneamine

According to most recent scientific literature geranium oil does not contain methylhexaneamine. (ElSohly et al, J Anal Toxicol 36:457-471, 2012; Lisi et al, Drug Test Anal. 3(11-12):873-6. doi: 10.1002/dta.392, 2011; Zhang et al., Pest Manag Sci. 2012 Aug 28. doi: 10.1002/ps.3411; Zhang et al., Drug Test Anal, DOI 10.1002/dta.1368, 2012; Di Lorenzo et al., Drug Test Anal DOI 10.1002/dta.1391, 2012).

Concentration of MHA found in the sample

The specific gravity of the Athlete's urine sample was 1.004, indicating considerably diluted urine which underestimates the real concentration of methylhexaneamine. If this concentration was corrected for a population mean urinary specific gravity of 1.020 (Miller et al, Clinical Chemistry 50:5 924-932, 2004), the estimated concentration of methylhexaneamine in the Athlete's urine sample would approximately be of 10,000 nq/mL, (10 µq/mL).

A concentration of 10,000 nq/mL, is compatible with the oral administration of supplements containing methylhexaneamine as reported in the literature (Lisi et al, Drug Test Anal. 3(11-12):873-6. doi: 10.1002/dta.392, 2011; Perrenoud et al., J Chromatog B, 877:3767-3770, 2009)

Cutaneous absorption of geranium oil

Cutaneous absorption of essential oils including geranium oils is reported to be poor (Watt, Aromatic Thymes, Vol.3 No2, 11-13, 1995). Therefore, even if the VLCC products did contain methylhexaneamine originating from the geranium oil, cutaneous absorption of methylhexaneamine would be very poor as well. It is therefore extremely unlikely that the normal use of an aesthetic product containing geranium oil would result in a positive test for methylhexaneamine, in particular with such a high urinary concentration.

Potential to enhance performance

Given the estimated concentration level of methylhexaneamine in the Athlete's urine sample, it is also possible that Athlete's athletic performances were effectively enhanced following the ingestion of methylhexaneamine.”

88. Both the Appellant and the Athlete have referred to scientific articles concerning studies of methylhexaneamine and geranium oil in supplements and concerning percutaneous absorption.

LEGAL ANALYSIS

VI. JURISDICTION OF THE CAS

89. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body."

90. Article 13.1 of NADA ADR states as follows:

"13.1 Decisions Subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules. "

91. Article 13.2.1 and 13.2.2 of the NADA ADR rules state as follows:

"13.2.1 Appeals Involving International-Level Athletes

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

13.2.2

In cases involving national-level Athletes, that do not have a right to appeal under Article 13.2.1, the decision may be appealed to the Anti-Doping Appeal Panel."

92. In article 13.2.3 it is said that WADA is one of the bodies which are entitled to appeal in cases under article 13.2.1. In the same article is also stated that for cases under article 13.2.2, WADA shall also have the right to appeal to CAS with respect to the decision of the Anti-Doping Appeal Panel.

93. The Athlete herself contends that she is an International-Level Athlete, but in this case she has been treated as if she is a national-level Athlete, as she was directed to the ADAPI. In the issue of jurisdiction for the CAS, this makes no difference, as CAS according to the above-defined rules has jurisdiction in both situations.

94. It is not contested that the CAS has jurisdiction in this dispute.

95. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

VII. ADMISSIBILITY

96. Article 13.2.2 of the NADA ADR provides that:

"The filing deadline for an appeal or intervention filed by WADA shall be the later of:

- (a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
- (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."*

97. WADA has alleged that it received documents pertaining to the case file of the Appealed Decision on 4 October 2012 and 22 October 2012. WADA did not accept that the documents it has received constituted the entire case file and therefore reserved its rights in this respect. The Second Respondent has confirmed that WADA received the last part of the file on 22 October 2012.

98. In light of the above, the Panel finds the Appeal admissible.

VIII. APPLICABLE LAW

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

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

100. It is common ground between the parties that the applicable regulations of this case are the NADA ADR which applies to all Persons who are members of a National Sports Federation of India; regardless of where they reside or are situated. Therefore, the NADA ADR shall be applied on the merits.

101. As to procedural issues, the procedural rules of the CAS Code, supplemented if necessary by Swiss procedural law and principles, shall be applied.

IX. THE PANEL'S FINDINGS ON THE MERITS

Anti-Doping Violation:

102. According to article 2.1 of NADA ADR the following constitute Anti-Doping Rule Violations:

"Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

- 2.1.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
- 2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athletes B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample."*
103. The Athlete has not contested that both her A Sample and her B Sample from the In-Competition test of 11 January 2012 were positive for methylhexaneamine.
104. In Article 4.1 of the NADA ADR it is stated that:
- "These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code. NADA will make the current Prohibited List available to each National Federation, and each National Federation shall ensure that the current Prohibited List is available to its members and constituents."*
105. The presence of the prohibited substance methylhexaneamine in the Athlete's bodily samples is therefore established. Thus, an anti-doping rule violation has also been established.

Determining the sanction

106. According to article 10 of the NADA ADR the following sanctions are applicable:
- "10.1 Disqualification of Results in Event During which an Anti-Doping Rule Violation Occurs***
- 10.1.1 *An Anti-Doping Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2.*
- 10.1.2 *If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competition shall not be Disqualified unless the Athlete's results in Competition other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.*

10.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of Code Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Code Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Code Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility. "

107. As a result, the Panel now has to put under scrutiny whether articles 10.4 or 10.5 of NADA ADR may apply to the present case:

"10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the use of a performance enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years' Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Athlete or other Person's degree of fault shall be the criteria considered in assessing any reduction of the period of Ineligibility."

Commentary to Article 10.4 of the WADA Code (which is the same rule):

"Specified Substances are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 10.6. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation. This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's

open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or its Metabolites is detected in an Athlete's sample in violation of Code Article 2.1 (Presence of Prohibited Substance), the Athlete shall also establish how the Prohibited Substance entered their system in order to have the period of Ineligibility eliminated. In the event that this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of Ineligibility for multiple violations under Articles 10.7.

10.5.2 No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's sample in violation of Code Article 2.1 (Presence of Prohibited Substance), the Athlete shall also establish how the Prohibited Substance entered their system in order to have the period of Ineligibility reduced."

108. To prevail under article 10.4 of the NADA ADR, the Athlete must first (i) establish how the Specified Substance entered his or her body and then (ii) that such Specified Substance was not intended to enhance the Athlete's sport performance. The Panel shall put both these requirements under scrutiny.

109. Prior to this analysis, the Panel considers it worth pointing out that it is to be kept in mind that the Anti-Doping Rules adopts the rule of strict liability. From the strict liability principle follows that, once WADA has established that an anti-doping rule violation has occurred, as in the present case, it is up to the Athlete to demonstrate that the requirements foreseen under article 10.4 of the NADA ADR are met. Such a burden of proof is expressly stated under article 3.1 fourth phrase of the NADA ADR, which provides that:

"Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the Athlete must satisfy a higher burden of proof."

110. As to the first requirement, i.e. the ingestion of the Prohibited Substance, the Athlete argues that such ingestion probably occurred when she was using some VLCC Products. She has argued that she used these products for many years and that the methylhexaneamine must have entered her body during this time as a result of cutaneous absorption.
111. WADA has referred to an e-mail from a representative of the VLCC Health Care Ltd. – Mr. Purna Arun – who has stated that the products which the Athlete said she was using – VLCC - Shape Up, Hips, Thighs & Arms shaping Oil and Gel, VLCC - Geranium and Grapefruit Anti-Aging Natural Bathing Bar and VLCC - Skin Tightening Geranium Face Pack – do not contain methylhexaneamine.
112. Furthermore, NADA tested all three VLCC Products and the test results confirm that the VLCC Products do not contain methylhexaneamine.
113. WADA has also referred to a written statement by Dr. Irene Mazzoni, Senior Manager, WADA Science, where she summarizes the recent scientific research concerning methylhexaneamine. Dr. Mazzoni notes among other things the following:
1. Methylhexaneamine was detected in the Athlete's sample at a concentration of 2000 nq/mL, (2 µg/mL), as estimated by the WADA-accredited National Dope testing Laboratory in New Delhi, India. The specific gravity of the Athlete's urine sample was 1.004.
 2. According to most recent scientific literature geranium oil does not contain methylhexaneamine.
 3. The specific gravity of the Athlete's urine sample was 1.004, indicating considerably diluted urine which underestimates the real concentration of methylhexaneamine. If this concentration was corrected for a population mean urinary specific gravity of 1.020, the estimated concentration of methylhexaneamine in the athlete's urine sample would approximately be of 10,000 nq/mL, (10 µg/mL).
 4. A concentration of 10,000 nq/mL, is compatible with the oral administration of supplements containing methylhexaneamine as reported in the literature.

5. Cutaneous absorption of essential oils including geranium oils is reported to be poor. Therefore, even if the VLCC products did contain methylhexaneamine originating from the geranium oil, cutaneous absorption of methylhexaneamine would be very poor as well. It is therefore extremely unlikely that the normal use of an aesthetic product containing geranium oil would result in a positive test for methylhexaneamine, in particular with such a high urinary concentration.
 6. Given the estimated concentration level of methylhexaneamine in the Athlete's urine sample, it is also possible that Athlete's athletic performances were effectively enhanced following the ingestion of methylhexaneamine.
114. The Athlete had referred to scientific articles, which discuss methylhexaneamine in geranium oil and the possibility of cutaneous absorption of methylhexaneamine. The Panel also notes that many products or substances that actually contain methylhexaneamine fail to list that as an ingredient and instead refer to geranium oil and the like, but that does not mean that they are one in the same. The Panel however believes that the stance of WADA and some NADAs has been varying on whether geranium oil can be a source of methylhexaneamine, therefore athletes pleading geranium oil as the source of methylhexaneamine for the period between 2010 to 2012 when the confusion existed should be taken into consideration when considering the quantum of punishment when methylhexaneamine is found during the above period.
 115. The Athlete alleges that the statement by Dr. Mazzoni is not reliable since she is working for WADA, which is the counterpart to the Athlete in this case. The Panel, however, finds that Dr. Mazzoni is a very trustworthy scientist. This aside, even if no correction was made for the specific gravity in the analysis, it follows that the Athlete's suggestion that the VLCC products she used contained the Prohibited Substance is mere speculation and unsupported by any evidence of any kind. In our view the Athletes' unsatisfactory explanation for the level of cutaneous absorption is sufficient to find against her. Consequently the Athlete's suggestions cannot be accepted by the Panel. This means that article 10.4 of NADA ADR cannot be applied in this case.
 116. Consequently, because the Athlete failed to establish the source of the methylhexaneamine in her bodily system, the Athlete can not avail herself to article 10.5.1 or 10.5.2 of the NADA ADR, and the Panel cannot reduce the sanction according to these articles.
 117. It follows that the Athlete shall be sanctioned according to the rule in article 10.2 NADA ADR, which means two years' Ineligibility.

What is the starting point of Ineligibility?

118. Pursuant to article 10.9 NADA ADR:

"the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed."

119. According to article 10.9.3 of the NADA ADR, the Anti-Doping Disciplinary Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person.
120. In this case the Athlete has voluntarily served a period of provisional suspension from 20 April 2012 up to 17 July 2012 when the ADDPI decided that she should only get the sanction of a reprimand. The Panel also noted that the Athlete then had to wait in excess of another year before receiving this award. The Panel notes the position of the CAS panel in *CAS 2011/A/2562* where the athlete, a footballer in that case, suffered an initial suspension, followed by substantial delays in the appeal process, then a further suspension. That panel determined such a series of events did prejudice that footballer (in particular noting that the effect of any suspension lasts longer than the suspension itself, as the player takes time to build back up to a professional level of fitness/ability and therefore a split or double suspension makes that worse) and back dated the period of Ineligibility to the sample date (*see also CAS 2012/A/2784*). This Panel similarly acknowledges the Athlete has been unnecessarily prejudiced by the time needed to prosecute this case. The Panel, on a review of these proceedings is of the view that the entire proceedings (as no hearing was ever requested by the Athlete) could have resulted in a final award by 1 May 2013. Hence, the two-year period of Ineligibility shall start on that date with a deduction for the period of voluntarily served period of Ineligibility (*see CAS 2010/A/2307*).

Disqualification of results

121. Article 9 of NADA ADR provides that:
- “An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.”*
122. 10.8 states:
- “In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.”*
123. The ADDPI has not ruled on anything with respect to the disqualification of the result of the Athlete obtained in the Event. WADA has requested that all competitive results obtained by the Athlete from 11 January 2012 through the commencement of the applicable period of Ineligibility shall be annulled. According to article 9 and article 10.8 of NADA ADR, the Panel finds that all competitive results obtained by the Athlete from 11 January 2012, inclusive the results in the Event, until the date of this de-

cision shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

X. COSTS

124. The Panel notes that this appeal was directed against a decision of a national sports body and for this reason does not fall under Article R65 of the CAS Code. Article R64 of the Code, therefore, applies.

125. Article R64.4 of the CAS Code provides:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

126. Article R64.5 of the CAS Code provides:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

127. This appeal was brought by WADA in partial execution of its public function as a monitory and regulatory institution of the WADA Code. Bearing in mind the outcome of the arbitration, in particular the fact that the appeal has succeeded in full and that the Second Respondent itself appealed the First Instance decision (thereby aligning itself with the Appellant in these proceedings), the Panel holds that the costs of this appeal should be borne by the First Respondent.

128. As a general rule, the CAS grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The CAS may however depart from that principle under certain circumstances, which the Panel

chooses to do in this case. As a consequence, the Panel takes the view that it is reasonable in the present case to order that each party shall bear its own legal costs.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA on 12 November 2012 is upheld.
2. The decision of the Anti-Doping Appeal Panel of India is set aside.
3. Nirupama Devi Laishram is sanctioned by a two year period of ineligibility, which shall commence on 1 May 2013. The period of voluntarily served provisional suspension of 89 days shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Nirupama Devi Laishram from 11 January 2012, including the results in the Senior Judo Championships in Kolkata, shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
5. The costs of arbitration, to be determined and notified by the CAS Court office, shall be borne entirely by Nirupama Devi Laishram.
6. Each party shall bear its own legal costs and other expenses incurred in connection with this arbitration.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 8 November 2013

THE COURT OF ARBITRATION FOR SPORT

Judge Conny Jörneklint
President of the Panel

Mr Mark Hovell
Arbitrator

Justice Mukul Mudgal
Arbitrator