NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 38 of 2025

[Arising out of Order dated 04.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court V, Division Bench), in (IB)-202(PB)/2021 in New IA/5719/2024]

IN THE MATTER OF:

Anil Kumar

(Resolution Professional in the Personal Insolvency Resolution Process of Sh. Mukund Choudhary) C-10, Lajpat Nagar – III, New Delhi-110024 Email: jcpersonalinsolvency@gmail.com; anil2566@gmail.com

...Appellant

Versus

Mukund Choudhary

(Personal Guarantor) House No. 7, 1st Floor, Padmini Enclave, Hauz Khas New Delhi-110016 Email: <u>mukund1971@gmail.com</u>

...Respondent

Present:

For Appellant	:	Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and Ms. Aakriti Gupta, Advocates.
For Respondents	:	Ms. Purti Gupta, Ms. Henna George and Ms. Harshita Kakkar, Advocates.

ORDER

ASHOK BHUSHAN, J.

This Appeal has been filed by the Resolution Professional (RP) of the Corporate Debtor, challenging the Order dated 04.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court – V, Division Bench), disposing of I.A. No. 5719/2024 filed by the RP.

- **2.** Brief facts necessary to be noticed for deciding the Appeal are:
 - On an Application filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (for short 'The Code' or 'The IBC') by the Personal Guarantor, Respondent herein, Adjudicating Authority passed an Order on 08.04.2021, declaring Interim Moratorium in terms of Section 96 of the IBC. By the same Order, the Appellant herein was appointed the Resolution Professional.
 - ii. Appellant filed a Report under Section 99 of the IBC, which Report was considered by the Adjudicating Authority and by Order dated 30.04.2024, Section 94 Application filed by the Personal Guarantor was admitted and Personal Insolvency Resolution Process (PIRP) was initiated as per the Order dated 30.04.2024, fresh Moratorium in terms of Section 101 was to commence which was contemplated to cease to have effect at the end of period of 180 days.
- iii. Public announcement was made by RP on 03.05.2024.
- iv. Draft Repayment Plan was also submitted by the Personal Guarantor.
- v. RP recommended the convening of the Meeting of the Creditors in terms of Section 106(2)(c) of the IBC.

- vi. First Meeting of Creditors was rescheduled on 23.10.2024, when the Creditor discussed the Repayment Plan and requested the Personal Guarantor to improve the financial proposal and reduce the timeline.
- vii. On 28.10.2024, RP was authorised to file an appropriate Application for extending PIRP by 90 days beyond 180 days.
- viii. Appellant thereafter filed an I.A. 5719/2024 seeking extension of the PIRP by 90 days beyond 180 days, which Application came to be rejected by Adjudicating Authority on 04.12.2024, by which Application, the Adjudicating Authority has granted 90 days extension to complete the process, however, no views were expressed on the Moratorium.

ix. Aggrieved by the Order dated 04.12.2024, this Appeal has been filed.

3. We have heard Mr. Milan Singh Negi, Learned Counsel appearing on behalf of the Appellant and Ms. Purti Gupta, Learned Counsel appearing on behalf of the Respondent.

4. Learned Counsel for the Appellant challenging the Order submits that Insolvency Resolution Process without Moratorium shall render the entire exercise of personal Resolution Process as futile. Adjudicating Authority erred in not extending the Moratorium beyond 180 days which 180 days was expiring on 28.10.2024. The extended period of PIRP with effect from 29.10.2024 without Moratorium shall enable the Creditors to take recovery action or execute enforced security interest which shall defeat the entire exercise of PIRP. In the present case, Repayment Plan has already been received within 180 days during the Moratorium provided under Section 101. The period of 180 days as provided in Section 101 is directory and the Adjudicating Authority has jurisdiction to extend the said period. Learned Counsel for the Appellant has placed reliance on the Judgment of this Tribunal in the matter of 'Vikas Gautamchand Jain' in Comp. App. (AT) (Ins.) No. 1173/2024, decided on 20.08.2024 to support his submissions. Learned Counsel for the Appellant has also relied on the Judgment of the Hon'ble Supreme Court in the matter of 'P. Mohanraj & Ors.' Vs. 'Shah Brothers Ispat Pvt. Ltd.' reported in (2021) 6 SCC 258.

5. Learned Counsel Ms. Purti Gupta appearing for the Personal Guarantor also supported the submission of the Appellant and submits that prescription of 180 days under Section 101 is only directory and is not mandatory. In appropriate case Adjudicating Authority has full jurisdiction to extend the period of 180 days. It is submitted that without extension of Moratorium proceeding under Personal Guarantor shall not yield any favourable results.

6. We have considered the submissions of the Counsel for the Parties and perused the record.

7. The PIRP against the Personal Guarantor was admitted by Order of the Adjudicating Authority dated 30.04.2024 and while admitting Section 94 Application filed by the Personal Guarantor, Adjudicating Authority directed for fresh Moratorium under Section 101. In Para 10 of the Order following has been directed:

"10. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to

take all further steps in accordance with Part III, Chapter III of the Code. During the moratorium period – a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and c) the Respondent shall not transfer, alienate, encumber, or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of the period of 180 days."

8. 180 days Moratorium which was imposed on 30.04.2024 was coming

to an end on 28.10.2024. The Application was filed by the RP being I.A. No.

5719/2024, where following prayers were made:

"a. Allow the present application and extend the present PIRP of Sh. Mukund Choudhary by 90 days w.e.f. 29.10.2024 (180 days expired on 28.10.2024);

b. Such other order(s)/ directions(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case."

9. When we looked into the prayers of the RP, their prayer was for extension of PIRP of the Personal Guarantor for 90 days with effect from 29.10.2024. The Adjudicating Authority in the Impugned Order has granted extension of 90 days with effect from 29.10.2024, however, Adjudicating Authority has not expressed any view on the Moratorium. Entire Order dated 04.12.2024 is as follows:

"This is an application filed by the Resolution Professional under Rule 11 read with Rule 15 of the NCLT Rules, 2016 seeking extension of the time for completion of the Personal Insolvency Resolution Process, for 90 days w.e.f. 29.10.2024. Heard the submissions made by Ld. Counsel on behalf of Applicant/ RP who submitted that the repayment plan has been received and the same is under consideration of the creditors and in order to approve the repayment plan in terms of Section 112 of the Code, there is a need for seeking extension of time for completion of the process. In view of the fact that the objective of the Code is to have Insolvency Resolution Process of the Personal Guarantor and in order to achieve the said objective, in the facts and circumstances of the present case and in the interest of justice, it would be appropriate to give a reasonable period to the RP for completion of the process. Therefore, RP is allowed to complete the process regarding taking decision on the repayment plan and for that purpose, 90 days extension w.e.f. 29.10.2024 is granted. RP and creditors are directed to complete the process within the extended period. However, we have not expressed any views on the moratorium. With these observations, the present application i.e. New IA/5719/2024 is disposed off."

10. In the Appeal which has been filed, following prayers has been made in

Paragraph 21:

"a) Set aside the impugned order dated 04.12.2024 passed by the Ld. Adjudicating Authority to the extent it observes "However, we have not expressed any views on the moratorium";

b) Direct that a moratorium in terms of section 101 of IBC shall apply to the present PIRP during the extended period of PIRP i.e. 90 days w.e.f. 29.10.2024;

c) pass any other order/direction in the facts and circumstances of the present appeal and in the interest of the Justice."

11. The prayer as noted above in the Appeal is to extend the Moratorium for 90 days with effect from 29.10.2024. The question which has come for consideration before this Tribunal in this Appeal is as to whether the period of Moratorium could have been extended by the Adjudicating Authority, although in the Impugned Order, Adjudicating Authority has not expressed any opinion regarding Moratorium while extending 90 days for PIRP, but Appellants having prayed for extension of Moratorium for 90 days, we need to consider provisions of Section 101 of the IBC and to consider as to whether extension of Moratorium which is statutory prescribed under Section 101 can

be extended by the Adjudicating Authority or by this Appellate Tribunal.

Section 101 deals with Moratorium. Section 101 provides as follows:

"101. Moratorium– (1) When the application is admitted under <u>section 100</u>, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under <u>section 114</u>, whichever is earlier.

(2) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under <u>section 96</u> has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

12. When an Application under Section 95 is admitted, Interim Moratorium

commences on filing of the Application which is provided in Section 96(1).

13. In the present case, the Application under Section 94 was filed by the

Personal Guarantor on 08.04.2021 by filing of which the Interim Moratorium

commenced. Section 94 Application remain pending consideration before the

Adjudicating Authority on account of challenge of the vires of provisions under

Section 95 – 100 before the Hon'ble Supreme Court in the matter of 'Dilip B.

Jiwrajka' Vs. 'Union of India & Ors.' in Writ Petition No. 1281/2021,

which could be decided in November 2023 and thereafter the Order of admission under Section 100 was passed on 30.04.2024. Section 101(1) provides that when Application is admitted under Section 100 a Moratorium shall commence in relation to all debts and shall cease to have effect at the end of period of 180 days. Provisions under Section 101, thus provides about both the dates, i.e., date of commencement of the Moratorium and date when it shall cease to have effect. The sub-Section uses the expression **"and shall cease to have effect at the end of period of 180 days**". Thus, the provision itself provides for the cessation of the Moratorium, which is the statutory scheme as delineated by Section 101(1).

14. The submission which is advanced by the Appellant is that said period prescribed under Section 101(1) is only directory and can be extended by Adjudicating Authority in appropriate case.

15. The question which has arisen in the present Appeal is regarding statutory interpretation of the provision of Section 101(1). The principles for interpretation of statute are well settled. We may refer to the Constitution Bench Judgment of the Hon'ble Supreme Court in the matter of 'State of UP & Ors.' Vs. 'Babu Ram Upadhyay' reported in AIR 1961 SC 751. Constitution Bench held that for determining as to whether statute is mandatory or directory, the Court has to ascertain the real intention of the nature and the consequences which would follow from construing it from one way or other. In Paragraph 29 of the Judgment following was laid down:

"29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall",

prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom. and, above all, whether the object of the legislation will be defeated or furthered."

16. We may refer to another Judgment of the Hon'ble Supreme Court in the matter of '*Rajsekhar Gogoi' Vs. 'State of Assam & Ors.'* reported in (2001) 6 SCC 46, where Hon'ble Supreme Court had occasion to consider Rule 206 of Assam Excise Rules 1945, which provided that tender must be in such form and contained such particulars as may be prescribed by the State Government and tenders not containing all the particulars shall be liable to be rejected. Arguments was raised before the Hon'ble Supreme Court that the said provision is not mandatory, which argument was rejected. Rule 206 was noted in Paragraph 8 of the Judgment which is as follows:

"8. *Rule 206 after its amendment in 1981 reads as follows:*

"206. (1) Save with the special sanction of the State Government all country shops will be settled under the tender system.

(2) The tenders must be in such form and contain such particulars as may be prescribed by the State Government. Tenders not containing all the particulars shall be liable to be rejected. (3) Each tender must bear a court fee stamp of Rs 24.75 or any other amount as may be prescribed by the State Government from time to time.

(4) Each tender shall be for a single shop, but any person may submit separate tenders for any number of shops. The tenders are not transferable from one shop to another. No shop shall be settled with anyone who has not tendered for the shop within the notified time. Whenever it is found that no tender has been received for a shop within the notified time or where a suitable person from amongst the tenderers is not found for settlement, a fresh notice shall be issued inviting tenders for such a shop; provided that a notice of ten days will be sufficient in such cases."

It is admitted that prior to 1981 the sentence "tenders not containing all the particulars shall be liable to be rejected" occurring in sub-rule (2) of Rule 206 was not there. It is for this reason that the earlier decision of the Assam High Court had come to the conclusion that the said Rule was not mandatory especially when it did not provide for the consequence in the event of the application not being filed in accordance with the prescribed form. Column 11 of the form of tender reads as follows:

"11. Whether the tenderer will be capable of financing his business himself. Give details of source: cash in hand, bank balance, security, assets etc."

In answer, Respondent 4 stated as under:

"Yes, I am financially capable enough to run the business. I shall get financial assistance in this respect from my father and also from my sister and sister's husband."

17. In Paragraph 11, the Hon'ble Supreme Court held that the language of the rule is clear and unambiguous. It also stipulates the consequence of non-compliance, therefore, it is mandatory. Para 11 of the Judgment following was held:

"11. We are, therefore, of the opinion that as the tender itself of Respondent 4 was liable to be rejected because

of lack of particulars as stated hereinabove, no further question arises. We do not agree with the observations of the High Court that Rule 206 is not mandatory. The language of the said Rule is clear and unambiguous. It not only says that the tenders must be in their required form but also stipulates the consequence of noncompliance thereto, the consequence being that the tenders not containing all the particulars "shall be liable to be rejected"."

18. We may also notice the Judgment of the Hon'ble Supreme Court in the

matter of 'Newtech Promoters & Developers Private Limited' Vs. 'State of

Uttar Pradesh & Ors.' reported in (2021) 18 SCC 1, where Hon'ble Supreme

Court laid down that it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon enquiry and find out the solution in substituting the legislative wisdom. In Paragraph 84 and 114, following was laid down:

> **"84.** The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.

> **114.** It is a well-established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose. Section 81 of the Act positively empowers the Authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act. As a consequence, except the

power to make regulations under Section 85 of the Act, other powers and functions of the Authority, by a general or special order, if delegated to a Single Member of the Authority is indeed within the fold of Section 81 of the Act."

19. To the same effect is another Judgment of the Hon'ble Supreme Court in the matter of 'Kotak Mahindra Bank Ltd.' Vs. 'A. Balakrishnan & Anr.', reported in (2022) 9 SCC 186. Hon'ble Supreme Court in the above case had occasion to consider Section 238-A and Section 7 of the IBC. Hon'ble Supreme Court in the above Judgment has laid down when the language of the statutory provisions is plain and unambiguous it is not permissible for the Court to add or subtract words to statute or read something into it which is not there. In Paragraph 77 & 78, following was held:

77. It is more than well settled that when the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. At the cost of repetition, we observe that if the argument as advanced by Shri Viswanathan is to be accepted, it will completely change the texture of the fabric of subsection (22-A) of Section 19 of the Debts Recovery Act.

78. Though there are umpteen number of authorities to support this proposition, we do not wish to burden our judgment with them. Suffice it to refer to the judgment of the three-Judge Bench of this Court in Nasiruddin v. Sita Ram Agarwal [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577] wherein this Court has held as under : (SCC p. 589, para 37)

"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. <u>It</u> cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(emphasis supplied)

20. Justice G.P. Singh, in "Principle of the statutory interpretation", 15th Edition has also opined that when consequences are provided by statute, when the consequences of nullification are provided by the statute, there can be no manner of the doubt that such statutory requirement must be interpreted as mandatory. Under the heading "when consequences provided by statute" Justice G.P. Singh states:

"5.6.2 When Consequences Provided by Statute

When consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory.

The provisions of Ceylon Ordinance No. 7 of 1840, which by clauses 2 and 21 provided certain formalities for transfers and contracts and further provided that no transfer or contract "shall be of force or avail in law" unless it was made in conformity with those requirements, were held by the Privy Council to be mandatory.

The periods prescribed in the Schedule to the Indian Limitation Act, 1908, for bringing a legal proceeding are mandatory as the consequence of the expiry of the period of limitation is provided by section 3 of the Act in that the court is enjoined to dismiss a legal proceeding instituted after expiry of the prescribed period. Similar result will follow if the court or the forum is directed as in section 24A of the Consumer Protection Act, 1986 not to admit a complaint unless it is filed within the period prescribed. The question of limitation in such cases is a jurisdictional fact and has to be considered by the court or forum even if not raised by any party."

21. When we look into the statutory scheme of the IBC, it is clear that Interim Moratorium is kicked in as soon as Application is filed under Section 94 and Section 95 by virtue of statutory provision under Section 96 that Moratorium continues till an Order is passed under Section 100 for admission of rejection of the Application. Section 101 provides that when Application is admitted further Moratorium of 180 days shall commence which shall come to an end on the date Adjudicating Authority passes an Order on the Repayment Plan under Section 114 or 180 days whichever is earlier. The language of Section 101(1) is plain and clear, outer limit of Moratorium is prescribed by providing that 180 days from date of commencement of admission of the Application or an Order is passed by the Adjudicating Authority on the Repayment Plan under Section 114 whichever is earlier thus on happening of the eventuality as prescribed as Section 101(1) Moratorium comes to an end. Conceding any power to the Adjudicating Authority or this Tribunal to extend the said period shall be plainly against the statutory scheme of Section 101(1). When the statutory scheme is clear and unambiguous, there is no role of any interpretive process to find out the jurisdiction of NCLT to extend the period of Moratorium when statute provides a date for cessation of the Moratorium it cannot be extended by the Adjudicating Authority or by this Tribunal against the statutory intendment under Section 101(1).

22. Counsel for the Appellant has placed reliance on the Judgment of this Tribunal in **'Vikas Gautamchand Jain' (Supra),** this Tribunal had occasion to consider the provisions of Section 54D, which provided time limit for completion for Pre-Package Insolvency Resolution Process (PPIRP). Section 54D provides as follows:

"54D. Time-limit for completion of pre-packaged insolvency resolution process.-

(1) The prepackaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the prepackaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified."

23. This Tribunal after noticing the provisions of Section 54D, Section 54N

relying on the Judgment of the Hon'ble Supreme Court in 'Surendra Trading

Company' Vs. 'Jugilal Kamlapat Jute Mills Company Ltd. & Ors.' in

(2017) 16 SCC 143 and Judgment of the Hon'ble Supreme Court in the

matter of 'Committee of Creditors of Essar Steel India Limited' Vs.

'Satish Kumar Gupta & Ors.' reported in (2020) 8 SCC 531, came to the

conclusion that the provisions of Section 54D does not contemplate any

automatic termination of the PPIRP, hence the Court had discretion to extend

the time in an appropriate case. In Paragraph 29 & 30 of the Judgment following was laid down:

"29. Shri Maninder Singh, learned Senior Counsel, appeared on behalf of the State of Gujarat and supported para 201 of Nclat judgment by which his client would be paid 60.26% of sales tax dues.

30. Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of Mr Prashant Ruia supported the findings of Nclat, insofar as Nclat held that the personal guarantees given by his client had become ineffective in view of the payment of the debt by way of resolution to the original lenders. Further, Shri Rohatgi also argued that the right of subrogation and the right to be indemnified conferred on a guarantor under the Indian Contract Act would continue to exist in the absence of a positive waiver of such right by the said guarantor."

24. The Judgment of this Tribunal in the above case is clearly distinguishable. When we look into the Section 54D in contradistinction to Section 101(1) there is an automatic cessation of Moratorium prescribed by Section 101(1) whereas no such automatic termination is provided under Section 54D, which is the basis of the Judgment of this Tribunal in **'Vikas** *Gautamchand Jain' (Supra)*. Thus, the above Judgment was interpreting a different provision and has no Application on interpretation of Section 101(1) of the IBC. Another Judgment relied by the Counsel for the Appellant in the matter of **'P. Mohanraj & Ors.' (Supra)** was a case where Hon'ble Supreme Court was considering the effect and consequence of Moratorium. The issue which has arisen for consideration in the present case was not for consideration in the said case. The question which was answered in the above case was regarding Moratorium under Section 14 and applicability of the same with regard to proceeding under Section 138/141 of the NI Act. We

thus are of the view that the above Judgment of the Hon'ble Supreme Court does not help the Appellant in the facts of the present case.

25. In view of the forgoing discussions, we are of the view that prayers made in the Appeal cannot be granted, no extension of Moratorium can be allowed. In view of the expressed provisions of Section 101(1) limiting the Moratorium period to 180 days on the date when the Order is passed by the Adjudicating Authority for Repayment Plan, whichever is earlier. 180 days from commencement of the Moratorium has come to an end on 28.10.2024. The Moratorium has statutorily come to an end and could not be extended.

We do not find any merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan] Chairperson

> [Barun Mitra] Member (Technical)

[Arun Baroka] Member (Technical)

NEW DELHI

22nd January, 2025

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