

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 974 of 2023

**[Arising out of the Order dated June 12, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal,
New Delhi) in CP (IB) No. 662 (ND)/2022]**

IN THE MATTER OF:

M/s Santoshi Finlease Private Limited

Through its Director Mr. Yug Mittal
CIN: U65100DL2005TC139248
Having its registered office at:
A-11, Ground Floor, Nirman Vihar,
New Delhi – 110092

...Appellant

Versus

1. State Bank of India

Stressed Asset Management Branch-I,
Jawahar Vyapar Bhawan,
1 Tolstoy Marg, Janpath, New Delhi

...Respondent No.1

2. M/s Mothers Pride Dairy India Pvt. Ltd.

Having its registered office at:
G-41, Ground Floor, West Patel Nagar
New Delhi – 110008

...Respondent No.2

Present:

For Appellant : Mr. Saurabh Balwani, Mr. Anand Prakash and Mr.
Chirag Rathor, Advocates.

For Respondent : Mr. Harshit Khare and Mr. Prafful Saini, Advocates
for SBI.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is being preferred by the Appellant challenging the order dated 12.06.2023 ("Impugned Order") passed by the National Company Law Tribunal, Principal Bench, New Delhi (Ld. Adjudicating Authority) in

Company Application No.1695/D/2023 in CP. No. IB-662/2022 (the “Application”) in which the CP was dismissed and the IA No. 1695/2023 of the Respondent No. 1- Bank under Section 65 of IBC was allowed with penal cost of Rs.10,00,000/- against the Appellant.

Brief facts of the case

2. The Appellant, M/s Santoshi Finlease Pvt Ltd, filed a Section 7 Application under the Insolvency and Bankruptcy Code (IBC), 2016, against the Corporate Debtor - M/s Mothers Pride Dairy India Pvt Ltd for non-payment of a loan amount of INR 4,89,28,694/- (rupees four crores, eighty-nine lakhs, twenty-eight thousand, six hundred and ninety-four only) disbursed from 08.07.2019 to 15.11.2019. The loan was sanctioned under a term “loan agreement” signed on 17.08.2019, with interest set at 18% per annum, payable quarterly, and various terms for loan disbursement and processing fees. The total outstanding amount due from the Corporate Debtor is INR 9,32,52,937/- (rupees nine crores, thirty-two lakhs, fifty-two thousand, nine hundred and thirty-seven only) including both principal (INR 4,89,28,694/- rupees four crores, eighty-nine lakhs, twenty-eight thousand, six hundred and ninety-four only) and interest (INR 4,43,24,243/- rupees four crores, forty-three lakhs, twenty-four thousand, two hundred and forty-three only). The State Bank of India (SBI), as Respondent No. 1, filed IA No. 1695/2023 alleging that the Appellant's application for Corporate Insolvency Resolution Process (CIRP) was fraudulent and malicious, seeking its dismissal under Section 65 of IBC. Against the same Corporate Debtor, earlier also CIR proceedings had been admitted on 13.11.2019 by the NCLT Delhi, but was

later set aside by the NCLAT on 05.08.2022. Per contra the Appellant contends that the dismissal of the section 7 Petition was improper, as facts were overlooked and there was absence of any fraud or malice in the Application. The NCLT's dismissal was accompanied by a penalty of Rs 10,00,000/- (rupees ten lakhs only) to be paid to the Prime Minister's Relief Fund. Therefore, the Appellant has appealed to the Appellate Tribunal, seeking the initiation of the CIRP and justice for the non-payment of dues.

Case History:

3. Recapitulating the sequence of events, we note that the CD was incorporated on 30.09.2014. The original main promoters of the CD viz. Anant Kumar Chaudhary and Shalini Chaudhary had taken a term loan of Rs.26.67 crs from SBI as per sanction dated 20.12.2015. The original promoters of the Corporate Debtor, holding 90% of the shares resigned from the Board and transferred their entire shareholding to Navneet Jain, Sushil Kumar Singh and Vikash Yadav. Later on, in and around 2019, the then directors of the Corporate Debtor entered into some investment arrangement with a group (family members) of people namely: Ms Seema Mittal, Mr Kaushal Mittal, Mr Yug Mittal and Mr Rishik Mittal ("Mittal Family Members") and all of them were directors of the Corporate Debtor from 01.07.2019 till 23/24.09.2019. During this period the Mittal Family Members constituted majority on the Board of the Corporate Debtor. During the said period, the alleged "board resolution" of the Corporate Debtor dated 30.07.2019 was passed and alleged "loan agreement" dated 17.08.2019 was executed between the Appellant and the Corporate Debtor. One Mr Kaushal Mittal passed the alleged board

resolution dated 30.07.2019 on behalf of the Corporate Debtor who has been the Director of the Respondent since 02.8.2005 till today.

4. While Mr Yug Mittal, the then director of the Corporate Debtor and an existing director of the Appellant i.e. Santoshi Finlease executed the alleged loan agreement on behalf of the Corporate Debtor, one Ms. Kriti Mittal executed the alleged loan agreement on behalf of the Appellant.

5. Based on an application filed by one of the directors Smt. Shalini Chaudhury, Corporate Debtor was admitted into CIRP by way of the order passed by Hon'ble NCLT dated 13.11.2019 and the CIRP process was commenced in terms of the provisions of the IBC, 2016. In the CIRP of the Corporate Debtor, claims were invited and the collated by the Resolution Professional and accordingly the constitution of the CoC was carried over the period of the CIRP. During the CIRP the claims of the present Appellant (Santoshi Finlease Private Limited) as well as its sister concern (Santoshi Hyvolt Electricals Private Limited) were filed as financial debt. Accordingly, they were part of the list of financial creditors, without having a right to vote, being a related party to the Corporate Debtor. During the first few meetings of the CoC, the Mittal Family Members were attending the meetings, as part of "Suspended Management/Suspended Directors". During the CIRP, the then resolution professional, following the process laid down under the Code, invited prospective resolution applicants to submit the resolution plan and accordingly certain resolution plans were submitted in the CIRP of the Corporate Debtor and were discussed by the CoC over the period of various

CoC meetings. During the 14^a CoC meetings held on 06.01.2021, the then resolution professional of the Corporate Debtor, proposed before the CoC members having voting rights (State Bank of India and Shalini Chaudhary) certain resolution plans, which were submitted by proposed resolution applicants namely; Maharaja Agro Foods Private Limited, Sushil Kumar Singh in Consortium with M/S Fair Deal Food Ventures Private Limited, Mr. Navneet in consortium with M/s Capital Trade Link Limited and Santoshi Hyvolt Electricals Private Limited (an associate concern of the Respondent herein). However, none of the resolution plans were approved by the CoC, since none of the resolution plans were acceptable to the CoC. Meanwhile, on an appeal filed by one of the directors of the Corporate Debtor Shri. Sushil Kumar Singh this Tribunal vide its order dated 05.08.2022 dismissed the impugned order passed by Hon'ble NCLT dated 13.11.2019 and accordingly, the Corporate Debtor was out of the CIRP.

6. It is to be noted that almost during the same period, the Corporate Debtor was stamped as NPA on 31.03.2019 by Respondent No.1 - SBI. After the Corporate Debtor was out of CIRP, Respondent No.1 - SBI, as the sole secured financial creditor re-initiated SARFAESI action and arranged for fresh valuation of the properties, and for redirection of CMM/DM orders, which were issued three years back. Reserve Price for e-auction under SARFAESI Act was approved at Rs.28.68 crore on 08.02.2023. SBI as the sole secured financial creditor took physical possession of the plant on 22.02.2023, after the orders of CMM/DM. Respondent No.1 - SBI also revived the Original

Application No. 1039 of 2019 originally filed by the Applicant before the Hon'ble DRT, Delhi. But this CIRP was set aside by the order of this Tribunal on 05.08.2022. SBI started its recovery proceedings under SARFAESI Act, 2002 and revived the O.A. No. 1039/2019, before DRT, Delhi. E-auction of secured assets has already been concluded and on 03.05.2024 sale deed has been executed in favour of the successful auction purchaser.

Submissions of the Appellant:

7. The Appellant – Santoshi claims a total outstanding of about Rs.9.32 crores which includes the principal of about 4.89 crores and the Rs. 4.43 crs as interest. It claims that during the period from 08.07.2019 to 15.11.2019 the payments were made either directly to the CD or to the vendors of the CD, on the instruction of the CD. All payments were made through account transfer. It claims that Rs. 92 lakhs were paid directly to the CD and remaining was paid to the vendors of the Respondent No.2 – CD. It is claimed that the Appellant transferred a sum of Rs 4,89,28,694/- (rupees four crores, eighty-nine lakhs, twenty-eight thousand, six hundred and ninety-four only) to Respondent No. 2 or its vendors between 08.07.2019 and 15.11.2019, which is reflected in the ledger maintained by Respondent No. 2. The Appellant argues that the debt and default were adequately proven to initiate CIRP against Respondent No. 2. It claims that there is a “loan agreement” which was signed between the companies, there is a provision of interest @ 18% as per the loan agreement. Since there was a default in the payment of the loan and the default was more than the minimum threshold stipulated in Section 4(1) of the IBC, the Adjudicating Authority had no further discretion

except to admit the Section 7 Application and consequently initiate the CIRP against the Respondent No.2. Adjudicating Authority has not accepted the petition and rather has entertained the IA of Respondent No.1 – SBI under Section 65 of the IBC. The Adjudicating Authority has passed the impugned order holding that the Appellant and Respondent No.2 – CD – M/s Mothers Pride Dairy India Pvt Ltd had colluded in filing Section 7 petition against the Respondent No.2. Before coming to the finding of collusion the Adjudicating Authority has not given sufficient opportunity to the Appellant to make any submissions on such issues. Thus, the impugned order is in violation of natural justice.

8. The Appellant claims that the AA failed to recognise that it has no discretion to reject an Application under Section 7(5) of the IBC if a default has occurred and the Application is complete, as established by the ***Hon'ble Supreme Court in the case of Innoventive Industries Ltd vs ICICI Bank.***

9. The Appellant contends that the AA has failed to recognise that all the essential elements of 'default' under Section 3(12) of the IBC were met concerning the loan agreement between the Appellant and Respondent No. 2. The Authority should have followed the legal principles set forth by the Supreme Court in ***'M. Suresh Kumar Reddy vs Canara Bank' (Civil Appeal No. 7121 of 2022, dated 11/05/2023).***

10. The Appellant contends that the AA failed to consider key material facts when passing the Impugned Order. These facts, which were uncontested by

Respondent No. 1 in its Section 65 Application, were essential for the Section 7 IBC Petition. First, it is undisputed that a valid loan agreement was executed on 17.08.2019 between the Appellant and Respondent No. 2. Payments were made to third parties as instructed by Respondent No. 2, in accordance with the agreement. Following the disbursement of certain loan amounts, disputes arose between the parties, and relevant notices and affidavits, including an affidavit dated 03.03.2023, were filed by the Appellant. Additionally, the Appellant had filed FIR No. 536 of 2019 on 22.11.2019 and 10.12.2019 against Respondent No. 1 and the Directors under Section 406 of the IPC, concerning the plant and machinery of Respondent No. 2. Furthermore, in its Reply to the legal notice dated 05.11.2019, Respondent No. 1 explicitly refused to recognise Mr Yug Mittal and Mr Kaushal Mittal as Directors or bank signatories of Respondent No. 2, and denied the changes in its management. The Appellant argues that these material facts were ignored by the AA, which led to the passing of the Impugned Order without due consideration of the full scope of evidence and circumstances.

11. The AA also failed to recognise that Respondent No. 1 had a mala fide intention when filing its Application to dismiss the Section 7 Petition filed by the Appellant. At the time of filing the Petition, Respondent No. 1 had already initiated SARFAESI proceedings against Respondent No. 2 before the DRT. The goal of this Application was to achieve a favourable outcome that would allow Respondent No. 1 to recover money from Respondent No. 2 while

harming the interests of other stakeholders, who were seeking to revive Respondent No. 2 through CIRP. Additionally, the collusion between Respondent Nos. 1 and 2 is evident because Respondent No. 2 has not opposed the ongoing SARFAESI proceedings and, during the previous CIRP initiated on 13.11.2019, Respondent No. 1 sold properties of the Guarantor (Respondent No. 2) in violation of the moratorium. The Interim Resolution Professional (IRP) had filed several Applications (IA Nos. 3340/2020 and 4296/2020) against Respondent No. 1 in relation to this violation. To avoid further scrutiny of these violations, Respondent No. 1 is attempting to prevent Respondent No. 2 from entering CIRP. These crucial facts, indicating a clear abuse of process, should have been considered before the AA dismissed the Section 7 Petition.

12. The reasoning of AA that one of the directors could have made the payment or terminated the loan agreement but instead chose to resign, was flawed. A director and the company are distinct legal entities as per settled law. The actions or inactions of a director cannot be directly attributed to the company, and thus, the AA's opinion contravened the Supreme Court's rulings in similar cases.

13. The Adjudicating Authority took a hyper-technical approach in its interpretation of the definition of 'default' under Section 3(12) of the IBC. Specifically, the AA wrongly concluded that the debt owed by Respondent No. 2 to the Appellant was not due and payable because the moratorium in the previous CIRP of Respondent No. 2 was still in place. However, this CIRP had

already been dismissed by the NCLAT. The AA's reasoning was incorrect, and it exceeded its jurisdiction by addressing issues that were not raised or pleaded by any of the parties involved in the dispute.

14. The Appellant contends that the AA failed to properly assess the documents, including the Reply filed by Respondent No. 1 (SBI) in the Section 7 Petition. Allegations of collusion between the Appellant and Respondent No. 2 (M/s Mothers Pride Dairy India Pvt. Ltd.) were speculative and lacked substantive evidence. Consequently, the Impugned Order lacked legal justification under Section 65 of the IBC. Additionally, the AA disregarded the Appellant's affidavit dated 03.03.2023, which refuted collusion claims. Instead, the AA relied on Respondent No. 1's allegations without considering the Appellant's prior clarification. The Appellant maintains that Respondent No. 1 acted with malicious intent, abusing judicial processes to delay CIRP. The AA also ignored Respondent No. 1's Reply to a legal notice on 05.11.2019, where it denied recognizing Mr. Yug Mittal and Mr. Kaushal Mittal as directors or signatories of Respondent No. 2. This contradicts Respondent No. 1's subsequent claims, indicating that its Application was filed in bad faith to obstruct the Section 7 Petition. The Appellant emphasizes that at the time of default (15.11.2019), the Mittal family had no control over either the Appellant or Respondent No. 2. Thus, the AA's finding of collusion was unfounded, resulting in the wrongful acceptance of Respondent No. 1's Section 65 Application.

15. The AA erred in recognizing the loan agreement and default, but still dismissed the Section 7 Petition based on Respondent No. 1's assertions. The Appellant contends that this decision is legally flawed and should be set aside. During a prior CIRP (CP(IB) 2122/2019) for Respondent No. 2, Respondent No. 1 was found colluding with Respondent No. 2 in financial irregularities. Despite the moratorium, Respondent No. 1 regularized directors and shareholdings, violating court orders—an issue raised before the Tribunal.

16. Respondent No. 1, holding a 92% share in the CoC, incurred CIRP costs exceeding ₹3 crores, funded through payments from the Appellant under the 17.08.2019 loan agreement. After NCLAT set aside the CIRP, Respondent No. 1 should have pursued recovery from Ms. Shalini Choudhary, the Financial Creditor in CP(IB)/2122/2019, under Section 65 of the IBC.

17. The AA failed to properly establish or explain the necessary prima facie opinion under Section 65 of the IBC. Specifically, it did not provide any justification for why the Appellant's initiation of CIRP through the Section 7 IBC Petition was for any purpose other than the legitimate resolution of the insolvency or liquidation of Respondent No. 2.

18. Under Section 7 of the IBC, it is mandatory for a Financial Creditor to disclose all relevant details regarding any security held, including its nature and estimated valuation, in Part V of Form 1. The Appellant did provide these disclosures, but if the nature or status of the security was incorrectly stated, the Application should be considered defective. The AA, however, did not

properly assess whether these disclosures were accurate, ignoring the legal intent to ensure that the financial status and security details are truthful and transparent for the adjudication process. Moreover, the AA failed to take into account that Respondent No. 1 did not disclose the ongoing SARFAESI proceedings against Respondent No. 2, which was crucial information. According to the law, the onus of accurately reporting the status of any security rests with Respondent No. 2. Since this disclosure was not made, Respondent No. 2 should have been asked to explain the discrepancy.

19. The AA made a grave error by forming a prima facie opinion that the directors of the Appellant and Respondent No. 2 acted with malicious or fraudulent intent when initiating the insolvency proceedings. The records, including pleadings and documents, clearly demonstrate that the directors acted in their official capacity as representatives of the respective companies, not as individuals. The involvement of the same directors in both companies is not an unusual or inherently suspicious circumstance. Furthermore, the loan agreement, which is central to the claim, was thoroughly scrutinised by the CoC, undermining any suggestion of fraudulent or malicious intent. The Authority neglected to form a prima facie opinion on whether there was any agreement involving fraud, or whether the defence presented was merely a baseless and frivolous attempt to dismiss the Petition.

20. The Tribunal, in passing the Impugned Order, has erred by failing to recognise that neither Respondent No. 1 nor the directors of Respondent No. 2 raised any objection to the loan agreement dated 17.08.2019 or the claim

amount submitted by the Financial Creditor during the previous CIRP. Furthermore, Respondent No. 1, through its counsel, explicitly confirmed in open court during the final hearing that there was no dispute regarding the loan amount.

21. Despite the resignation of the Mittal group members from their Director positions at Respondent No. 2 on 24.09.2019, the Financial Creditor continued to make payments as per the loan agreement dated 17.08.2019, based on specific requests from Respondent No. 2's CEO, Mr Navneet Jain, and director Ms Swati Bhatnagar. These payments, amounting to ₹1,30,04,561/- (rupees one crore, thirty lakhs, four thousand, five hundred and sixty-one only) were directed to vendors of Respondent No. 2. The Tribunal failed to recognise that these transactions were fully documented and executed through account transfers, as outlined in the loan agreement. The Financial Creditor filed necessary records (eg, documents dated 20.08.2019, 07.09.2019, and 12.09.2019) demonstrating the ongoing fulfilment of the loan terms even after the resignation of the Mittal group. The payments were made to support Respondent No. 2 and protect it from the negative consequences of multiple CIRPs.

22. The Appellant has relied upon the following judgements to support his case:

- ***'Innoventive Industries Ltd vs ICICI Bank,' 2018 (1) SCC 407:*** an Application under Section 7(5) of the IBC cannot be rejected if a default has occurred and the Application is complete.

- **‘M Suresh Kumar Reddy vs Canara Bank’ (Civil Appeal No. 7121 of 2022, dated 11/05/2023),’**: once the NCLT is satisfied that a default has occurred, there is little discretion left for the NCLT to refuse admission of the Application under Section 7 of the IBC. The only exception is when the debt is not due and payable, in which case the Application can be rejected.
- **‘Indowind Energy Ltd vs Wescare (I) Ltd and Anr’ (Civil Appeal No. 3874 of 2010),’**: companies are separate and distinct legal entities, even if they share common directors or the same person is the authorised signatory for both companies when entering into agreements.
- **‘Jagmohan Bajaj vs Shivam Fragrances Pvt Ltd’ (Company Appeal (AT) (Insolvency) No. 428 of 2018, dated 14th August 2018),’** clarified that internal disputes among directors, or the pendency of proceedings under Sections 241 and 242 of the Companies Act do not form a valid defence to the initiation of the CIRP under the IBC. The AA gravely overlooked the legal principles established by the Appellate Tribunal, and
- **‘Rahul Aneja vs Sushant Aneja and Anr’ (Company Appeal (AT) (Insolvency) No. 407 of 2018, dated 7th September 2018),’** upheld the right of shareholders who have provided loans to a company to initiate the CIRP.

23. The Appellant contends that it fulfils the criteria of a Financial Creditor due to the loan provided to Respondent No. 2. Neither Respondent No. 1 nor Respondent No. 2 disputed this fact. The default met the requirements under Section 7(1), and the Application satisfied Section 7(3), supported by relevant records proving the default. AA unjustifiably concluded that the filing was

collusive, relying on extraneous documents without granting the Appellant an opportunity to respond, thereby exceeding its jurisdiction. The Appellant claims that based on this clear evidence, the Impugned Order should be set aside.

Submissions of the Respondent No.1 /SBI

24. On 20.12.2015, Respondent No. 1 sanctioned a term loan of INR 28.5 crores to Respondent No. 2. By the time of the submission, Respondent No. 1 had disbursed a total of INR 26.67 crores to Respondent No. 2. The original promoters of Respondent No. 2, Sh Anant Kumar Chaudhary and Smt Shalini Chaudhary, who collectively held 90% of the company's shares, resigned from the Board and transferred their entire shareholding to Sh Naveen Jain. Respondent No. 2 changed its management without obtaining prior permission from Respondent No. 1. To revive the company, Sh Naveen Jain approached various companies and, on 14.03.2018, entered into a Memorandum of Understanding with Mothers Dairy Fruit and Vegetables Pvt Ltd. The agreement outlined that Mothers Dairy would start poly pack milk operations under its brand, based on a sales and purchase agreement model, on a principal-to-principal basis. In 2019, the then directors of Respondent No. 2 entered into an investment arrangement with a group of individuals known as the Mittal family members—Ms Seema Mittal, Mr Kaushal Mittal, Mr Yug Mittal, and Mr Rishik Mittal. All four became directors of Respondent No. 2 from 01.07.2019 to 24.09.2019, as reflected in the master data of Respondent No. 2 available on the MCA website. From 01.07.2019 to 23/24.09.2024, the Mittal family members held the majority on the Board of

Respondent No. 2. During this period, an alleged board resolution was passed on 30.07.2019, and an alleged loan agreement was executed between the Appellant and Respondent No. 2 on 17.08.2019. Notably, Mr Kaushal Mittal, who passed the alleged board resolution on behalf of Respondent No. 2, has also been a director of the Appellant since 02.08.2005 to present. Mr Yug Mittal, the signatory to this Appeal on behalf of the Appellant, was a director of Respondent No. 2 when the alleged board resolution was passed on 30.07.2019 and the alleged loan agreement was executed on 17.08.2019. He executed the loan agreement on behalf of Respondent No. 2. Ms Kriti Mittal, a member of the Mittal family, executed the same loan agreement on behalf of the Appellant. Respondent No. 2 made a delayed repayment of INR 6.79 crores towards its loan account with Respondent No. 1, with a delay of 89 days. However, due to the non-payment of this amount, the account was declared a non-performing asset (NPA) on 31.03.2019.

25. Per contra, Respondent No.1 – SBI claims that Rs. 92 lakhs, which was transferred by the Appellant to the Corporate Debtor was not a financial debt and was instead infused by the Appellant as an investment in the equity to acquire control and directorship of the CD. Directorship in a company is obtained by way of acquiring stake in a company by subscribing to equity or preference share. Smt. Seema Mittal, Kaushal Mittal, Yog Mittal and Rishik Mittal were appointed as Directors on 01.07.2019 and remained director of the CD till 23/24.09.2019. It has also attached the investment term sheet

dated 19.06.2019 under which the Santoshi Group/ Mittal family acquired 80% shareholding in the CD (@ 13 Rejoinder filed by the Appellant).

26. Smt Shalini Chaudhary, one of the directors of Respondent No. 2, filed section 7 petition and that was admitted as per order dated 13.11.2019, passed by the AA. During the CIRP, claims from the Appellant and its sister concern, Santoshi Hyvolt Electricals Pvt Ltd, were filed as financial debt and included in the list of Financial Creditors. However, they did not have voting rights, being related parties to Respondent No. 2. Additionally, during the initial meetings of the CoC, the Mittal family members attended as part of the Suspended Management/Suspended Directors. During the CIRP, the Resolution Professional invited prospective Resolution Applicants to submit Resolution Plans. Several Plans were submitted and discussed during various CoC meetings. In the 14th CoC meeting, the Resolution Professional proposed that the following Resolution Applicants, who had submitted their plans, be presented to the CoC members with voting rights, namely State Bank of India (Respondent No. 1) and Smt Shalini Chaudhary:

“Maharaja Agro Foods Pvt Ltd, Sushil Kumar Singh in Consortium with M/S Fair Deal Food Ventures Pvt Ltd, Mr Navneet in consortium with M/S Capital Trade Link Ltd and Santoshi Hyvolt Electricals Pvt Ltd (as associate concern of the Appellant herein)”

None of the Resolution Plans were approved by the CoC, as none of the plans were deemed acceptable to the CoC.

27. One of the directors of Respondent No. 2 filed an Appeal before the Tribunal, which, by Order dated 05.08.2022, dismissed the Impugned Order

dated 13.11.2019, passed by the AA. As a result, Respondent No. 2 was removed from the CIRP. After Respondent No. 2 was removed from the CIRP, Respondent No. 1, as the sole Secured Financial Creditor, re-initiated the SARFAESI proceedings. They arranged for a fresh valuation of the properties and sought redirection of CMM/DM Orders issued three years prior. The reserve price for the e-auction under SARFAESI was set at INR 28.68 crores as of 08.02.2023. Subsequently, Respondent No. 1 took physical possession of the plant on 22.02.2023, after obtaining the CMM/DM Orders. Additionally, Respondent No. 1 revived the Original Application (1039 of 2019) filed before the DRT, Delhi.

28. The Appellant filed Petition CP (IB) No. 662 of 2022 before the AA with the sole intention of stalling the recovery proceedings initiated by Respondent No. 1 through SARFAESI actions, delaying the recovery of Respondent No. 1's dues. It is also important to note that Respondent No. 1 had already lost three years during the previous CIRP process of Respondent No. 2, which began in November 2019. The Petition CP (IB) No. 662 of 2022 before the AA is filed in bad faith and with malafide intentions, aiming to push Respondent No. 2 into CIRP. This would allow the Appellant an opportunity to take over Respondent No. 2. A similar attempt was made by the Appellant in the earlier CIRP, but it was dismissed by the Tribunal's Order dated 05.08.2022. The Appellant is reportedly controlled by members of the Mittal family and filed the Petition CP (IB) No. 662 of 2022 under Section 7 of the IBC, with Mr Yug Mittal representing the Appellant. The Appellant's pleadings before the AA,

particularly the additional affidavit filed on 03.03.2023, revealed that there were multiple groups of shareholders/directors of Respondent No. 2 at different times. These included the original promoters, Ms Shalini Chaudhary and Mr Anant Chaudhary (Chaudhary Group), the Mittal family members (Ms Seema Mittal, Mr Kaushal Mittal, Mr Yug Mittal, and Mr Rishik Mittal), and another group consisting of Mr Sushil Singh, Mr Navneet Jain, and Mr Vikas Yadav (Others Group). A term sheet was signed between the Mittal family members and the Others Group on 28.06.2019, for investment in Respondent No. 2, after which the Mittal family took control of the management. Four members of the Mittal family were appointed as directors on Respondent No. 2's board from 01.07.2019 to 23/24.09.2019, as shown in the master data of the Corporate Debtor available on the MCA website. Disputes arose between the Mittal family members and the Other Group due to alleged concealment of material facts. In its additional affidavit dated 03.03.2023, filed before the AA, the Appellant stated that, because of a dispute over misrepresentation, Mr Yogesh Mittal of the Mittal family was compelled to file a police complaint in August 2019 against Mr Anant Chaudhary, Mrs Shalini Chaudhary, Mr Vikas Yadav, and Mr Navneet Jain. Additionally, Respondent No. 2 claimed that the disputes stemmed from the Mittal family's failure to invest the agreed amount. The Appellant's case before the AA was that Respondent No. 2 borrowed INR 5 crores from the Appellant under a loan agreement dated 17.08.2019, which Respondent No. 2 failed to repay. The loan agreement was executed between the Appellant and Respondent No. 2 during the period when the Mittal family members were in control of Respondent No. 2, specifically

from 01.07.2019 to 23/24.09.2019. The Mittal family members, who controlled both the Appellant Company and Respondent No. 2, decided to borrow the money from the Appellant. Mr Yug Mittal, who filed CP (IB) No. 662 of 2022 on behalf of the Appellant, signed the loan agreement on behalf of Respondent No. 2. Additionally, his sister, Ms Kriti Mittal, who was admitted by the Appellant's Counsel to be his sister, signed the loan agreement on behalf of the Appellant Company.

29. A CIRP was initiated against Respondent No. 2 by an earlier Order dated 13.11.2019 in CP No. IB 2122(ND)/2019. During the process, the Appellant attempted to take over Respondent No. 2 through its sister concern, Santoshi Hyvolt Electricals Pvt Ltd, which submitted a Resolution Plan. However, Respondent No. 1 did not accept any of the Resolution Plans. The Section 7 Petition is a result of the ongoing dispute between the Mittal family and the shareholders of Respondent No. 2. The loan agreement in question is disputed by Respondent No. 2, as it was executed during the period in 2019 when the Mittal family members controlled both companies. Given the circumstances and the ongoing disputes between the two groups, it can be concluded that the CP (IB) No. 662 of 2022 was not filed by the Appellant to resolve the insolvency of Respondent No. 2. Instead, it was filed with malafide intentions to wrongfully push Respondent No. 2 into CIRP and take over the company. Repeated CIRPs have been initiated against Respondent No. 2, disrupting Respondent No. 1's right to pursue legal remedies for recovering its dues. Respondent No. 2 had initiated steps under SARFAESI, but this was stayed

following the commencement of the CIRP on 13.11.2019 at the instance of director Smt Shalini Chaudhary. Later, the CIRP was found to be based on an illegal document and was set aside by this Tribunal on 05.08.2022. After Respondent No. 2 was removed from the CIRP, Respondent No. 1 re-initiated SARFAESI actions and other recovery measures, taking physical possession of the plant on 22.02.2023, upon obtaining CMM/DM Orders. Respondent No. 1 also revived the Original Application No. 1039 of 2019 before the DRT, Delhi. It is further noted that the Appellant, in its written submission dated 25.05.2023, acknowledged that CIRP had been previously initiated against Respondent No. 2. These repeated CIRPs have therefore stalled Respondent No. 1's legal rights to recover its dues. There have been multiple attempts to initiate the CIRP against Respondent No. 2. These attempts include: (a) a Petition filed by OC Portrait Advertising and Marketing Pvt Ltd, which was admitted by the AA on 27.06.2017, but subsequently set aside by the Supreme Court on 28.07.2007; (b) a Petition filed by director Smt Shalini Chaudhary, which was admitted on 13.11.2019 and later dismissed by this Tribunal on 05.08.2022; (c) a Petition filed by Splendid Buildwell Pvt Ltd seeking CIRP initiation; and (d) several other Petitions filed against Respondent No. 2, as outlined in the chart presented by the Appellant. These repeated attempts to initiate CIRP underscore the ongoing legal battles and challenges faced by Respondent No. 2.

30. The AA correctly allowed the Application of Respondent No. 1 and dismissed the CP (IB) No. 662 of 2022 filed by the Appellant on 12.06.2023.

The Authority held that the Petition was filed by the Appellant with malicious and fraudulent intent, specifically to push Respondent No. 2 into CIRP and wrongfully take control of the company. Therefore, the AA did not err in dismissing the Petition, as the Appellant's only intent was to initiate the CIRP for improper purposes.

31. The Respondent argues that the AA rightly allowed IA 1695 of 2023 and imposed the fine on the Appellant for filing a Petition with malicious and fraudulent intent.

Appraisal

32. We have heard Counsels of both sides and perused materials on record.

33. The main issues before us are whether there is a debt and default for Section 7 Petition to be admitted and whether the Section 7 Petition was filed with malicious intent or not and also whether the penalty of Rs 10,00,000/- imposed on the Appellant is justified or not.

34. First of all, we go into the issue whether the Section 7 Petition was filed with malicious intent or not. Basis the materials on record Adjudicating Authority has noted in detail about common Directors at paragraph 11 and 12 in the Impugned Order and it has come to a conclusion that Section 7 Petition was filed with malicious intent. The details of common Directors in Appellant (Santoshi) and the Corporate Debtor (CD-Mothers Pride) with their tenures is captured in the following table:

Sl. No.	Name of Director	Name of Director	Tenure
1.	Mr. Yug Mittal	Santoshi Finlease Private Limited	16.08.2021 to till date
		Mothers Pride Dairy India Private Limited	01.07.2019 to 23.09.2019
2.	Mr. Kaushal Mittal	Santoshi Finlease Private Limited	02.08.2005 to till date
		Mothers Pride Dairy India Private Limited	01.07.2019 to 24.09.2019

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35. We find that the purported Loan Agreement, dated 17.08.2019, on which the Appellant relies, was executed between the Appellant and Respondent No. 2 during the period from 01.07.2019 to 23/24.09.2019, when the Mittal family members were in control of Respondent No. 2. Notably, during this time, the Mittal family members, while managing Respondent No. 2, decided to borrow funds from the Appellant Company, which was also under their control. Mr Yug Mittal, who filed Company Petition CP (IB) No. 662 of 2022 before the Adjudicating Authority (AA) on behalf of the Appellant, signed the Loan Agreement on behalf of Respondent No. 2. Furthermore, his sister, Ms Kriti Mittal, signed the same agreement on behalf of the Appellant Company. This demonstrates that the Agreement was essentially a Mittal-to-Mittal transaction. Additionally, the original loan tenure was short, spanning from 08.07.2019 to 31.10.2019, with an option for an extension only until 31.10.2019. Mr Yug Mittal and Mr Kaushal Mittal, who were common Directors in both the Appellant and the CD, did not make any genuine efforts to recover the loan. Instead, they resigned from their directorship of the CD on 23.09.2019, which was within one month of the filing of the Section 7

Petition on 30.08.2019 in the matter of M/S Shalini Choudhary vs Mother Pride India Pvt Ltd. This Petition was ultimately admitted by the Adjudicating Authority (AA) on 13.11.2019 but was later set aside by the Appellate Authority. The AA has rightly concluded that there could not have been a default on 15.11.2019, the date mentioned in Part IV of the Company Petition, because by that time, a moratorium had come into effect due to the first round of insolvency. Given that the Loan Agreement was valid from 08.07.2019 to 31.10.2019, and during this period, both Kaushal Mittal and Yug Mittal were Directors in both the CD and the Appellant, they were directly responsible for any default by the CD. The filing of the Section 7 Petition by these individuals, while being Directors of the Financial Creditor, was not intended to seek a genuine resolution for the CD but rather to harm its interests, thereby demonstrating malicious intent. The Appellant is a related party to the CD, with common Directors during the relevant period when the alleged debt and default occurred. We find merit in the argument that the Mittal family members, who controlled both entities at the time, orchestrated the Loan Arrangement, making the claim self-serving and legally untenable. The Appellant and its related entities were actively involved in the management of the CD during the transactions in question, reinforcing the case for malice.

36. Thus, we find strength in the arguments of Respondent No. 1-SBI that the Appellant's Section 7 Petition was filed with ulterior motives. Consequently, we see no infirmity in the findings of the AA, as they are based on the material on record.

37. This Tribunal, in its judgment dated 05.01.2023, in the case of **Wave Megacity Centre Private Limited vs Rakesh Taneja & Ors. (Company Appeal (AT) (Insolvency) No. 918 of 2022)**, held the following:

“15. When the Adjudicating Authority has recorded a finding that a Section 10 Application has been initiated fraudulently and maliciously, the Authority is not obligated to admit the Application, even if debt and default exist. Section 10 and Section 65, being part of the same statutory framework, must be read together to give full effect to the legislative intent of the Code. If a corporate applicant initiates CIRP fraudulently or with malicious intent for any purpose other than insolvency resolution, holding that the Adjudicating Authority is bound to admit the Section 10 Application would contradict the statutory scheme under Section 65. If the conditions under Section 65 are met, the Section 10 Application may be rejected, even if debt and default are proven. Thus, Section 65 serves as an enabling provision, allowing the rejection of an application despite the establishment of debt and default, and the admission of a Section 10 Application is not mandatory...”

Applying this principle, the AA extended these observations to the Section 7 Petition, dismissing IB-662/2022 filed by the Appellant and allowing the Section 65 Application under the IBC, 2016, filed by SBI. Given the facts and circumstances of the present case, we find no infirmity in the AA’s decision to impose a penalty of Rs 10 lakhs on the Appellant—M/S Santoshi Finlease Pvt Ltd.

38. As noted above by us that rejection of attempted CIRP due to reasons of its fraudulent and malicious initiation, we need not go into the issue of the existence of financial debt and default, yet for sake of completeness we are delving into it to find out the real nature of the transactions in this case. On the issue of the existence of debt, we find that the Appellant transferred a sum of Rs 92,00,000/- (Page 147 of the Appeal) to the CD, as per the account

statement of the Appellant. The true nature of the purported 'Loan Agreement' has been noted by us previous in paragraphs. Contemporaneously, we find that Seema Mittal, Kaushal Mittal, Yug Mittal and Rishik Mittal were appointed as Directors in the CD on 01.07.2019 and remained Directors of the CD till 23/24.09.2019 [Page 14 and 15 of Reply]. Contemporary Investment Term Sheet dated 19.06.2019 was also signed, under which the Santoshi Group/Mittal Family acquired 80% shareholding in CD [@ Page 13 of the Rejoinder filed by the Appellant]. Even though it is claimed by the Appellant that the Term Sheet dated 19.06.2019 was entered amongst Mr Navneet Jain, Santoshi Group, Vikas Yadav and Mr Anant Choudhary for reviving the company, yet we don't find any other consideration except for payment of Rs 92 lakhs from the Santoshi Finance to the CD for acquiring stake in the company by subscribing to equity or preference share and obtaining Directorship in the CD and cannot be considered as loan. Therefore, in the facts and the circumstances of the case we find that all the amounts shown as amount paid by the Appellant, were paid to acquire stake in CD and appoint the Directors. We cannot but conclude that the amount of Rs 92,00,000/- in question was not a loan but instead infused by the Appellant as an investment in equity to acquire control and Directorship in the CD, and not as a loan or financial debt. And the said investment was not in the nature of a disbursement against time value of money, which is a fundamental criterion for a financial debt.

39. As previously noted, the rejection of the CIRP Application was due to

its fraudulent and malicious initiation. While it is unnecessary to examine the existence of financial debt and default, we do so for the sake of completeness to ascertain the true nature of the transactions in this case. Regarding the existence of debt, the Appellant transferred a sum of INR 92,00,000/- (Page 147 of the Appeal) to the CD, as reflected in the Appellant's account statement. The actual nature of this purported 'Loan Agreement' has already been discussed in earlier paragraphs. Simultaneously, we observe that Seema Mittal, Kaushal Mittal, Yug Mittal, and Rishik Mittal were appointed as Directors of the CD on 01.07.2019 and remained in their positions until 23/24.09.2019 (Page 14 and 15 of Reply). Additionally, an Investment Term Sheet dated 19.06.2019 was signed, under which the Santoshi Group/Mittal Family acquired 80% shareholding in the CD (Page 13 of the Rejoinder filed by the Appellant). Although the Appellant claims that the Term Sheet dated 19.06.2019 was executed among Mr Navneet Jain, Santoshi Group, Vikas Yadav, and Mr Anant Choudhary to revive the company, we find no evidence of any consideration other than the payment of Rs 92 lakhs by Santoshi Finance to the CD for acquiring a stake in the company—either by subscribing to equity or preference shares—and obtaining Directorship in the CD. This transaction cannot be considered a loan.

40. Given the facts and circumstances of this case, we conclude that the amounts purportedly paid by the Appellant were, in fact, investments intended to acquire a stake in the CD and secure directorship. Accordingly,

the sum of Rs 92,00,000/- was not a loan but an equity infusion aimed at obtaining control over the CD. Moreover, this investment does not satisfy the essential criteria of a financial debt, as it was not a disbursement made against the time value of money.

41. The Appellant has claimed that it made several payments on behalf of the CD to its vendors and employees. These payments were made by the Appellant in its capacity as an implied holding company, given that the Mittal family controlled both the Appellant and the CD during the relevant period. However, as these payments were not directly disbursed to the CD, they do not qualify as a financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("Code"). Consequently, no debt, as defined under the Code, has arisen from these transactions, rendering the present claim untenable and failing to meet the necessary threshold for initiating proceedings under Section 7 of the Code.

42. For initiating proceedings under Section 7 of the Code, the existence of a "financial debt" and a corresponding "default" is a *sine qua non*. In the present case, we examine when the loan was recalled by the Appellant and whether a consequent default occurred. Assuming the alleged debt was disbursed under the purported Loan Agreement dated 17.08.2019, we note that the Agreement does not clearly specify a repayment date. The debt has been disbursed from 08.07.2019 to 15.11.2019 according to Part IV of the Company Petition under Section 7 of the Code, and the Appellant has designated 15.11.2019 as the date of default [Page 83 of the Appeal]. However,

as of 13.11.2019, the CD had already been admitted into CIRP under another Company Petition. Furthermore, under Clause 7(d) of the alleged Loan Agreement [Page 97-98 of the Appeal], admission of the CD into insolvency constitutes an *Event of Default*. As a consequence of such an event, Clause 8(a) [Page 97 of the Appeal] requires the Appellant to issue a Recall Notice for the loan amount to become due and payable. However, no such Recall Notice was ever issued. Additionally, no document substantiating the Date of Default has been placed on record. In the absence of both disbursements directly to the CD and default, the attempt to invoke proceedings under Section 7 of the Code is unsustainable. Since no debt, as envisaged under the Code, has arisen from the said transaction, the present claim is untenable and does not satisfy the threshold for initiating proceedings under Section 7 of the Code.

43. The Appellant has sought to rely on the judgment of the Hon'ble Supreme Court in **Innoventive Industries Ltd vs ICICI Bank, 2018 (1) SCC 407**, which established that an application under Section 7(5) of the IBC cannot be rejected if a default has occurred and the application is complete. The Appellant has also referred to **M. Suresh Kumar Reddy vs Canara Bank (Civil Appeal No. 7121 of 2022, dated 11/05/2023)**, wherein it was held that once the NCLT is satisfied that a default has occurred, it has limited discretion to refuse admission of an application under Section 7 of the IBC. The only exception is when the debt is not due and payable, in which case the application may be rejected. However, the facts of the present case are distinguishable, as neither debt nor default has been established and as

noted by us separately in the facts of this case malice has been established. Consequently, these judgments do not support the Appellant's case.

44. The Appellant has sought to rely on the judgment of the Hon'ble Supreme Court in ***Indowind Energy Ltd vs Wescare (I) Ltd and Anr (Civil Appeal No. 3874 of 2010)***, which affirmed that companies are separate and distinct legal entities, even if they share common directors or have the same authorized signatory when entering into agreements. However, considering the facts and circumstances of the present case, it is evident that the Section 7 petition was filed fraudulently and maliciously, and for its determination if necessary corporate veil can be pierced. Notably, in the first round of CIRP, the available material indicates that Santoshi Hyvolt Electricals Private Limited—an associate concern of the Appellant—had submitted a resolution plan to acquire the CD [@ Page 37 of Reply]. Moreover, the Appellant and its related entities were actively involved in the management of the CD at the time of the alleged transactions, demonstrating a clear element of malice. We find merit in the argument that the Mittal Family Members, who controlled both the CD and the Appellant during the relevant period, orchestrated the alleged loan arrangement, rendering the claim self-serving and legally untenable. It is evident that the present petition was filed with the sole intention of obstructing recovery proceedings. Although the first round of CIRP, initiated in 2019, was ultimately dismissed by this Hon'ble Appellate Tribunal on 05.08.2022, the current events indicate that, through this second unsuccessful attempt at CIRP—now the subject of this appeal—the Appellant

is merely seeking to delay the legitimate recovery proceedings initiated by Respondent No. 1 under the SARFAESI Act.

45. The Appellant has sought to rely on the judgment of this Appellate Tribunal in **Rahul Aneja vs Sushant Aneja and Anr (Company Appeal (AT) (Insolvency) No. 407 of 2018**, dated 7th September 2018, which upheld the right of shareholders who have provided loans to a company to initiate CIRP. This principle affirms that Financial Creditors—whether shareholders or otherwise—are entitled to initiate insolvency proceedings for the recovery of loans. However, this judgment does not support the Appellant’s case, as the present matter concerns a Section 7 petition under the Code, where both debt and default must be established—requirements that have not been met in this instance.

46. The Appellant has sought to rely on the judgment of this Appellate Tribunal in **Jagmohan Bajaj vs Shivam Fragrances Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 428 of 2018**, dated 14th August 2018, which clarified that internal disputes among directors or the pendency of proceedings under Sections 241 and 242 of the Companies Act do not constitute a valid defense against the initiation of CIRP under the IBC. The Appellant contends that the AA overlooked the legal principles established by the Appellate Tribunal, specifically that internal disputes among directors or ongoing proceedings under Sections 241 and 242 of the Companies Act, 2013, do not serve as a valid defense to CIRP initiation under the IBC. It is further argued that the IBC, as a special law with overriding authority under Section

238, cannot be subordinated to disputes or actions governed by general corporate law. Consequently, the Appellant asserts that the AA's failure to recognize the precedence of the IBC, particularly the Financial Creditor's right to initiate CIRP, constitutes a significant error. However, this judgment does not support the Appellant's case, as the AA has explicitly established that the petition was filed with malicious intent. Furthermore, as previously noted, neither the existence of debt nor default—both prerequisites for the admission of a Section 7 petition—have been proven.

47. The Appellant argues that before concluding collusion, the Adjudicating Authority did not provide sufficient opportunity for submissions on the matter. Consequently, the impugned order under Section 65 of the Code is alleged to be in violation of natural justice. The IA filed by Respondent No. 1—SBI—was an application under Section 65 of the Code read with Rule 11 of the NCLT Rules, 2016, to which the Appellant had submitted a reply. Section 65(1) is reproduced below to clarify the authority vested regarding the fraudulent or malicious initiation of proceedings:

“65. Fraudulent or malicious initiation of proceedings: 1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

The IA filed by SBI specifically addressed this issue, and the Appellant had already submitted a written reply, including arguments, which are recorded on page 68 of the APB. Therefore, the claim that the principles of

natural justice were not followed by the AA is unfounded. Furthermore, there is no requirement for the AA to form a prima facie view under Section 65, as the provision does not necessitate such a determination.

48. The Appellant has also contended that Respondent No. 1—SBI—acted with mala fide intent when filing its application to dismiss the Section 7 Petition submitted by the Appellant. Respondent No. 1 had already initiated SARFAESI proceedings against Respondent No. 2 before the DRT. The purpose of this application, according to the Appellant, was to secure a favorable outcome that would enable Respondent No. 1 to recover funds from Respondent No. 2 while undermining the interests of other stakeholders seeking to revive Respondent No. 2 through CIRP. However, this claim is not supported by the facts. Respondent No. 2 had undergone multiple CIRPs, and Respondent No. 1—SBI—had been pursuing CIRP proceedings for approximately three years. As a creditor, it has the legal right to recover its dues. Given the facts and circumstances of the case, we find merit in the arguments of Respondent No. 1—SBI—that the Petition CP (IB) No. 662 of 2022 before the AA was filed in bad faith and with mala fide intent, aiming to push Respondent No. 2 into CIRP. This would have provided the Appellant an opportunity to take control of Respondent No. 2.

49. Based on the facts and circumstances, we conclude that the alleged loan from the Financial Creditor (FC)—Appellant Santoshi—was not a genuine loan but rather an arrangement designed to obstruct SBI's recovery efforts under the SARFAESI Act. Furthermore, in light of the

investment term sheet, the transfer of ₹62 lakhs cannot be considered a debt. Therefore, we find that no debt, as defined under the Code, has arisen from this transaction, rendering the present claim untenable and failing to meet the threshold for initiating proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. Additionally, we find that the Section 7 petition was filed fraudulently and with malicious intent. Given the facts and circumstances, the imposition of a ₹10,00,000 penalty is justified.

Orders:

50. Based on the facts and circumstances, we conclude that the Section 7 petition was filed with malicious intent. We find no error in the AA's decision to dismiss the CP and grant SBI's I.A. Accordingly we dismiss this appeal filed by the Financial Creditor (Santoshi) in CP (IB) No. 662/2022, which sought to initiate CIRP against Respondent No. 1 (Mother's Pride). Additionally, the orders concerning Application No. I.A. 1695/2023, filed by SBI under Section 65, are upheld along with the imposition of a ₹10,00,000 penalty. Each party shall bear its own costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi.
March 05, 2025.

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