



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 4859/2021

IN

Company Petition No. (IB) – 3079/ (ND) /2019

*Application under Section 60 (5) of the Insolvency And
Bankruptcy Code read with Rule 11 of NCLT rules on behalf
of the Respondent/ Corporate Debtor.*

In the matter of:

Mr. Anil Hada (HUF)

.....Financial Creditor

VERSUS

M/s. Intergen Energy Ltd. & Ors

. ...Respondent / Corporate Debtor

In the matter of:

M/s. Intergen Energy Ltd. & Ors

Registered Office: 24/4818, First Floor,

Prahlad Street, Ansari Road,

New Delhi- 110002

.... Applicant (Corporate Debtor)

Order Pronounced on: 19.07.2022

Coram:

Shri.P.S.N. Prasad, Hon'ble Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

For the Applicant: Mr. Prashant Mehta

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ORDER

PER- RAHUL BHATNAGAR , MEMBER (TECHNICAL)

1. The present Applicant has been filed by the Applicant/Corporate Debtor i.e. InterGen Energy Ltd &Ors. (herein after “the Applicant”) seeking to bring on record the settlement agreement dated 01.04.2021. The Applicant has prayed for the following reliefs:
 - Allow the present application to bring on record the settlement agreement dated 01.04.2021;
 - Dispose off/dismiss the Company Petition no. (IB 3079(ND)/2019;
 - Pass any other order as this Hon’ble Tribunal may deem fit and proper in the interest of justice, equity and good conscience

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

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- i. That the Applicant/ Corporate Debtor and the Respondent entered into an agreement dated 01.04.2021 for settlement of all outstanding dues.
- ii. That as per the terms of the said settlement agreement, the parties have fully and finally settled all the disputes and hence nothing survives in the present matter.
- iii. That the Applicant / Corporate Debtor had made payments to the Financial Creditor as agreed upon in the settlement agreement dated 01.04.2021 on the following dates:
 - a. 03.04.2021 - Rs. 15,00,000/- (Rupees Fifteen Lakhs)
 - b. 17.04.2021 - Rs. 5,00,000/- (Rupees Five Lakhs)
 - c. 17.04.2021 - Rs. 10,00,000/- (Rupees Ten Lakhs)
 - d. 19.04.2021 - Rs. 20,00,000/- (Rupees Twenty Lakhs)
 - e. 28.04.2021 - Rs. 5,00,000/- (Rupees Five Lakhs)
- iv. That the Corporate Debtor has already paid the Petitioner an amount of Rs.55 Lakhs, as full and final settlement with respect to the claims. That the total

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amount payable as per the said agreement is Rs. 60 lakhs, out of which Rs. 55 lakhs has already been paid by the Applicant/Corporate Debtor to the Petitioner and only an amount of Rs. 5 Lakhs is pending to be paid as on date.

- v. That at the time of execution of the settlement agreement, the Corporate Debtor had handed over certain security cheques to the Petitioner. However, the said payments were made directly to Petitioner's bank account through electronic mode, therefore the Corporate Debtor requested for return of the said security cheques from the Petitioner.
- vi. That the Petitioner in the most illegal manner, despite having receiving the payments in accordance and even prior to the scheduled dates as mentioned in the settlement agreement, misused the said security cheques and attempted to unjustly enrich itself. Accordingly, the payments qua the security cheques was not cleared by the Corporate Debtor, as advance payment in respect of the said amounts had already been made by the Corporate Debtor

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vii. That the Petitioner is now refusing to accept the remaining Rs. 5 lakhs in accordance with the settlement agreement, however the Corporate Debtor in order to show its bonafide is ready to deposit the said Rs. 5 lakhs before this Tribunal.

viii. That Clause IX of the Settlement Agreement states that 'the first party shall have right to revive and press all proceedings against the Second Party including but not limited to NCLT as well as N.I Act up to the extent settled within this agreement'. The settlement amount under this agreement is Rs. 60 Lakhs and therefore the matter does not fall within the NCLT remit as the amount is below Rs. 1 Crore.

ix. That nothing survives in the present petition as the full amount in accordance with the terms of the settlement agreement have been paid or will be deposited before this tribunal and hence the present petition deserved to be dismissed / disposed off.

3. The Respondent/Financial Creditor has filed reply to the Application of the Corporate Debtor stating as follows:

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- i. That the Corporate Debtor offered and assured to make the payment for a sum of amount of Rs 1.40 Crores to the Financial creditor due to which the Financial Creditor agreed and entered into a settlement agreement dated 28.01.2021 with the Corporate Debtor. In the said agreement, the Corporate debtor agreed to pay a total amount of Rs 1.40 Crores as full and final settlement of all dues to the Financial creditor. The said agreement has been deliberately not brought on record by the Corporate debtor for the reasons best known to him.
- ii. That vide letter dated 01.05.2019, the Corporate Debtor acknowledged the debt of Rs. 100 lacs as principal loan amount and also offered to compensate the Financial Creditor with 6% interest per month on the total amount from the date of borrowing till final payment as an interest/compensation for delay in returning the amount taken as loan.
- iii. That the Corporate Debtor approached the Financial creditor and expressed his desire to amicably settle the matter with the Financial Creditor.

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- iv. That the Corporate Debtor offered and assured to make the payment for a sum of amount of Rs 1.40 Crores to the Financial Creditor and on the basis of the assurances of the Corporate Debtor, the Financial Creditor entered into a settlement agreement dated 28.01.2021 with the Corporate Debtor, whereby the Corporate Debtor agreed to pay a total amount of Rs 1.40 Crores as full and final settlement of all dues to the Financial Creditor.
- v. That it was agreed by and between the parties that subject to all payments being made and on receipt of the full payment amount of INR 1.40 Crores in accordance with the agreement between the parties, the parties would bring their settlement agreement on the record of this Tribunal.
- vi. That as per the agreement dated 28.01.2021 and despite of clear cut understanding and assurances, the Corporate Debtor made only part payment to the Financial Creditor.

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- vii. That as per the aforesaid table/agreement dated 28.01.2021 and despite of clear cut understanding and assurances, the Corporate made only part payment to the Financial Creditor.
- viii. That as per the agreement dated 28.01.2021 and despite of clear cut understanding and assurances, the Corporate made only part payment to the Financial creditor
- ix. That under the said agreement dated 28.01.2021, there was a stipulation that payments will be made as per Schedule upto 23.03.2021 and on 01.04.2021, a new agreement will be signed between the parties showing balance outstanding of Rs 60 Lacs to be made to the Financial Creditor.
- x. That the Corporate Debtor made a payment of Rs 40 Lakhs till February 2021 and no payment was made in the month of March 2021. The Corporate Debtor prepared the agreement dated 01.04.2021 and sent the original draft signed by the authorized representative, i.e., Mr. Karan Singh and bearing the stamp of the Corporate Debtor Company to the



Financial Creditor. However, the Financial Creditor refused to sign the same as the payment of Rs. 80 Lacs till 24.03.2021 under the agreement dated 28.01.2021 was not fulfilled. After repeated follow ups and reminders, the Corporate Debtor paid an amount of Rs 35 lakhs via cheque/RTGS to the Financial Creditor's account in the month of April 2021 and thereafter no amount was paid to the Financial Creditor by the Corporate Debtor.

- xi. That the during the pendency of the hearing and in anticipation that the matter will be taken for some effective hearing, the Corporate Debtor again approached the Financial Creditor to proceed on the settlement. The Corporate Debtor handed over a cheque of Rs 25,00,000 dated 25.07.2021 in the name of Anil Hada HUF, drawn on Yes Bank Ltd, Unit No.3 Vatika City Point, MG Road Gurgaon 122001. That when the Financial Creditor presented the said cheque to its banker namely IDFC FIRST BANK, the Financial Creditor received a return memo from his bank that the said cheque got dishonored due to "Drawer's signature differs".



xii. That the Corporate Debtor also promised to make payment of the entire outstanding amount during the month of August 2021 together with interest at the rate of 6% per month compoundable on the amount in arrears. On this basis, the Corporate Debtor requested the Financial Creditor not to press its Petition immediately upon the next date of hearing so that the entire outstanding amount (together with interest thereupon at the rate of 6% per month) could be paid by the Respondent in the meanwhile.

xiii. That the present application purported to falsely aver that the parties settled the matter and that the Corporate Debtor had made the entire payment.

xiv. That it is denied that the petitioner is now refusing to accept the remaining Rs 5 Lakhs in accordance with the settlement agreement. The total settlement amount was of Rs 1.40 Crores. The Financial creditor has only received an amount of Rs 75 lakhs and an amount of Rs 65 Lakhs is still pending from Corporate Debtor.

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xv. That the actual settlement amount between the parties is for an amount of Rs 140 Lakhs which is well within the jurisdiction of this Tribunal.

4. Subsequent to the reply of the Financial Creditor, the Applicant/Corporate Debtor has filed a rejoinder stating as follows:

i. That as per clause 2(x) of the agreement dated 01.04.2021, all the prior agreements/negotiations stood overridden by the present settlement agreement. The said clause of the agreement dated 01.04.2021 is reproduced herein below for the sake of convenience:

“x. This agreement constitutes the entire agreement to settle and resolve all the claims that are subject to this agreement between the parties and overrides and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about that subject matter. No modification of this agreement shall be valid unless it is in writing, references this agreement, and signed by both the parties.”

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ii. That even clause 2(ii) and 2(vii) of the present settlement agreement states as follows:

“2(ii) Any previous agreements between the parties now stand null and void. . .

2(vii) The settlement agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement or agreement not expressly contained herein, or under any duress or by mistake. This settlement agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and release of claims.”

iii. That in view of the above mentioned clauses, any agreement arrived at between the Petitioner and the Respondent herein, prior to 01.04.2021 are declared null and void, which cannot in any circumstance be made enforceable by law. Hence, in view of the same, any contention raised by the Financial Creditor with respect to the agreement dated 28.01.2021 does not stand on any footing and has to be rejected.

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iv. That the Respondent has duly paid an amount of Rs. 55 lakhs to the Petitioner as full and final settlement towards to dues and is more than willing to deposit the remaining Rs. 5 lakhs before this Tribunal. However, the Petitioner is refusing to in fact accept the remaining Rs. 5 lakhs and is raising frivolous demands in order to extort more money from the Respondent.

v. That the settlement amount under this agreement is Rs. 60 Lakhs and therefore the matter does not fall within the NCLT remit as the amount is below Rs. 1 Crore.

5. Vide order dated 24.02.2022, both the parties were directed to file written submissions.

6. The Applicant has filed written submissions stating as follows:

i. That upon entering into settlement agreement, all the previous agreements stood novated in view of Section 62 of the Indian Contract Act, 1872 and accordingly perished. That upon entering into settlement

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agreement dated 01.04.2021, as per settled position of law, the original agreement need not be performed as the Petitioner expressly waived all its rights under the previous transaction and is therefore estopped from raising any such issues subsequent to entering of the settlement agreement dated 01.04.2021.

- ii. That it is absolutely improbable that the Financial Creditor agreed to enter into agreement dated 01.04.2021 without receiving due payments and therefore the submission of the Financial Creditor is devoid of any merit that settlement agreement dated 01.04.2021 is of no consequence.
- iii. That as per the Financial Creditor's own submission, the remaining amount due to be paid is Rs. 65 Lakhs. Even if the remaining amount left to be paid to the Petitioner is Rs. 65 lakhs, the same cannot fall under the ambit of NCLT to decide, since the amount is below the threshold of Rs. 1 crore. In view of the notification dated 24.03.2020, specified a minimum threshold of Rs. 1 Crore with the purposes of section

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4 of the Code. Furthermore, the order passed by the Hon'ble NCLT dated 19.01.2022 in (IB)- 797(ND)2021 titled as "*CBRE South Asia Pvt Ltd v. M/s United Concepts and Solutions Pvt Ltd*" at Para 16 stated that the notification dated 24.03.2020 sets the threshold limit of Rs. 1 Crore for Section 9 application as well as Section 7 application filed under the code.

- iv. That the Applicant is a financially sound company having turnover of over Rs. 80 Crore and bank limit of Rs. 50 Crore. Hence, there is no reason whatsoever to commit the purported forgery as alleged and the submission of the Petitioner that the signatures are forged and fabricated, apart from totally being bereft of any merit, in any event cannot be decided in summary proceedings like the present one
- v. That the settlement agreement dated 01.04.2021 bears original signatures of both the parties. Hence, the validity of the said agreement cannot be questioned.

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7. The Financial Creditor has filed written submissions stating as follows:

- i. That the Financial Creditor has furnished Form no. 1 under Rule 4 of the Insolvency and Bankruptcy (an application to the Adjudicating Authority) Rules, 2016 on 08.11.2019 by invoking the provision of Section 7 of the Insolvency and Bankruptcy Code against the Corporate Debtor. In the requisite Form, under the head “Particulars of Financial Debt” the total amount of debt granted is 96 Lakhs and the total amount claimed to be in default is stated to be Rs 100 Lakhs (inclusive of principal amount plus interest of INR 4 Lakhs @ 6% per month). The date of default is 30th April 2019.
- ii. That the Corporate Debtor has clearly, categorically, and unequivocally acknowledged the debt and default in its letter dated 01.05.2019.
- iii. That the Financial Creditor places reliance on the decision of the Hon’ble Supreme Court in *Innoventive Industries Ltd Vs ICICI Bank & Anr.* where it held that that the Adjudicating Authority only has to determine

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whether a “Default” has occurred, i.e. whether the “Debt” (even if disputed) was due and remained unpaid, and that if the Adjudicating authority is of the opinion that “default” has occurred, it has to admit the application unless it is incomplete.

- iv. That when the matter was part-heard, at the request of the Corporate Debtor, the parties executed a settlement agreement dated 28.01.2021. Under this settlement agreement, the Corporate Debtor once again clearly, categorically and unequivocally admitted its liability to make payment of an amount of Rs 1.40 Crores as full and final settlement of all dues of the Financial Creditor.
- v. That the Corporate Debtor, had with a mala-fide intention since he has not brought on record the agreement dated 28.01.2021, amounting to Rs. 1.40 Crore, tried to misconceive the Adjudicating Authority, by filing I.A. 4859/2021, by not disclosing that the signing of the agreement dated 01.04.2021, was contingent on the payment of Rs. 80 Lakhs being made by 23.03.2021. Therefore, the same falls within

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the purview of Section 31 and 32 of the Indian Contract Act, 1872.

- vi. That out of the admitted amount of INR 1.40 Crore, the Corporate Debtor made part payment of INR 75 lakhs between the months of December 2020 and April 2021.
- vii. That while the Corporate Debtor attempted to conceal and suppress the settlement agreement dated 28.01.2021 from this Tribunal, when the Financial Creditor filed a copy of this settlement agreement dated 28.01.2021, the Corporate Debtor did not dispute or deny the settlement agreement but instead set up the false and fraudulent plea that while the settlement agreement dated 28.01.2021 had been executed, it was superseded by a subsequent settlement agreement dated 01.04.2021.
- viii. That the Financial Creditor categorically denies that any settlement agreement dated 01.04.2021 was ever signed by the Financial Creditor. The copy of the settlement agreement dated 01.04.2021 has been forged and fabricated by the Corporate Debtor.

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- ix. That contrary to the Corporate Debtor's assertion that it had made payment of the entire settlement amount to the Financial Creditor, the Corporate Debtor handed over a cheque bearing no. 192676 of Rs 25,00,000 dated 25.07.2021 in the name of Anil Hada HUF, drawn on Yes Bank Ltd, Unit No. 3 Vatika City Point, MG Road Gurgaon 122001. This cheque was however, dishonoured upon presentment.
- x. That the judicial and extra-judicial admissions of the Corporate Debtor constitute clear and compelling evidence of the existence of debt and default of the Corporate Debtor on the date of institution of the Section 7 application.
- xi. That during the pendency of the instant proceedings, although settlement agreement dated 28.01.2021 was executed between the parties, Corporate Debtor failed to make payment of the amount admitted to be due under the said settlement agreement dated 28.01.2021. The settlement agreement dated 28.01.2021 thus has no

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other effect on the present proceedings except to provide clear documentary proof of the Corporate Debtor's admission of debt, default and liability.

xii. That the present petition is liable to be adjudicated on the basis of the facts as they existed on the date of institution of this petition. Even if the part payments made by the Corporate Debtor under the settlement agreement dated 28.01.2021 during the pendency of the instant proceedings are taken into account, the amount of debt remaining due as on date exceed INR 1 Lakhs which was the minimum amount of debt notified by the Central Government for the purposes of Section 4 of the IBC and in force prior to the revision of the threshold vide its Notification No. SO1205(E), dated 24.03.2020 when it raised the minimum amount to INR 1 crore.

8. We have heard the Ld. Counsels for both the parties and perused the averments made in the application as well as the documents enclosed with the application. The Applicant has filed the present Application to bring on

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record the settlement agreement dated 01.04.2021 and to dispose off/dismiss the Company Petition no. (IB 3079(ND)/2019 which was filed by the Financial Creditor u/s 7 of IBC Code,2016 to initiate CIRP on the Applicant/ Corporate Debtor for default in payment of debt of Rs. 100 Lakhs including interest @ 6% p.a as on 01.05.2019.

9. The Applicant/Corporate Debtor has averred that the total amount payable as per the said agreement was Rs. 60 lakhs, out of which Rs. 55 lakhs has already been paid by the Applicant/Corporate Debtor to the Petitioner and only an amount of Rs. 5 Lakhs is pending to be paid as on date and the Financial Creditor/Petitioner is now refusing to accept the remaining Rs. 5 lakhs in accordance with the settlement agreement, however the Corporate Debtor in order to show its bonafide is ready to deposit the said Rs. 5 lakhs before this Tribunal. The Financial Creditor has stated that the Corporate Debtor offered and assured to make payment for a sum of amount of Rs 1.40 Crores to the Financial creditor due to

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which the Financial Creditor agreed and entered into a settlement agreement dated 28.01.2021 with the Corporate Debtor. In the said agreement, the Corporate debtor agreed to pay a total amount of Rs 1.40 Crores as full and final settlement of all dues to the Financial creditor. The said agreement has deliberately not been brought on record by the Corporate debtor for the reasons best known to him. Under the said agreement dated 28.01.2021, there was a stipulation that payments will be made as per Schedule upto 23.03.2021 and on 01.04.2021, a new agreement will be signed between the parties showing balance outstanding of Rs 60 Lacs to be made to the Financial Creditor. The Corporate Debtor made a payment of Rs 40 Lakhs till February 2021 and no payment was made in the month of March 2021. The Corporate Debtor prepared the agreement dated 01.04.2021 and sent the original draft signed by the authorized representative, i.e., Mr. Karan Singh and bearing the stamp of the Corporate Debtor Company to the Financial Creditor. However, the Financial Creditor refused to sign the same as the payment of Rs. 80 Lacs

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till 24.03.2021 under the agreement dated 28.01.2021 was not fulfilled. After repeated follow ups and reminders, the Corporate Debtor paid an amount of Rs 35 lakhs via cheque/RTGS to the Financial Creditor's account in the month of April 2021 and thereafter no amount was paid to the Financial Creditor by the Corporate Debtor.

10. The Applicant/ Corporate Debtor has refuted the claims of the Financial Creditor that any amount of Rs.65,00,000 was pending to be paid as per previous agreement dated 28.01.2021 and has stated that the said agreement stood overridden by the present agreement dated 01.04.2021. As per the Corporate Debtor, upon entering into settlement agreement dated 01.04.2021, all the previous agreements stood novated in view of Section 62 of the Indian Contract Act, 1872 and accordingly perished. Upon entering into settlement agreement dated 01.04.2021, as per settled position of law, the original agreement need not be performed as the Petitioner expressly waived all its rights under the previous transaction and is therefore estopped from raising any such issues subsequent to entering of the

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settlement agreement dated 01.04.2021. However, the Financial Creditor has denied signing any settlement agreement dated 01.04.2021. The signing of the agreement dated 01.04.2021, was contingent on the payment of Rs. 80 Lakhs to the Financial Creditor by 23.03.2021. Therefore, the same falls within the purview of Section 31 and 32 of the Indian Contract Act, 1872.

11. The Corporate Debtor has further contended that even if the remaining amount left to be paid to the Petitioner is Rs. 65 lakhs, the same cannot fall under the ambit of NCLT to decide, since the amount is below the threshold of Rs. 1 crore in view of the notification dated 24.03.2020.

12. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for both the parties and upon appreciation of the documents placed on record, this Adjudicating Authority is of the view that the settlement agreement dated 01.04.2021 cannot be taken on record as it was contingent on the fulfillment of

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settlement agreement dated 28.01.2021. The Corporate Debtor had accepted his liability to pay a sum of Rs 1,40,00,000 vide agreement dated 28.01.2021 and a new agreement was supposed to be executed on 01.04.2021 for payment of Rs. 60,00,000. The said agreement dated 01.04.2021 was subject to payments being made as per Schedule upto 23.03.2021. The Corporate Debtor has admittedly failed to fulfil his obligations as per settlement agreement dated 28.01.2021. Further, the Notification No. SO1205(E), dated 24 March 2020 of the central government revising the threshold to INR 1 crore is prospective in nature and does not apply in respect of petitions instituted prior to the notification coming into force. The prospective nature and effect of the said notification has been confirmed by this Adjudicating Authority in its judgment in the case of *BLS Polymers Ltd. v. RMS Power Solutions Pvt Ltd 2021 SCC Online NCLT 666* in which it was held that Notification dated 24-3-2020 numbered as CG-DL-E-24032020-218898("Notification"), which enhanced the threshold limit from Rupees one lakh to Rupees one crore to

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initiate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016[3] (“IBC”) is only applicable in respect of defaults that occurred on or after 24-3-2020 (date of the Notification) and not prior to that.

13. This bench, after taking into consideration the facts and circumstances of the present case, dismisses the present application.

14. I.A. 4859/2021 stands disposed of in terms of the above order.

Let a copy of order be served to parties.

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MEMBER (TECHNICAL)

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MEMBER (JUDICIAL)