



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO. 14 OF 2024

M/s Linear Enterprises .. Applicant

versus

M/s Maha Active Engineering Pvt. Ltd. .. Respondent

Mr. A. A. Yadkikar, along with Mr. A. D. Kulkarni, Advocates for Applicant.

Mr. R. R. Totala, Advocate for Respondent.

CORAM : R. M. JOSHI, J.

RESERVED ON : 11th JULY, 2024.

PRONOUNCED ON : 26th JULY, 2024.

ORDER :

1. This Application is filed under Section 29A of the Arbitration and Conciliation Act, 1996 (for short 'Act') for extension of mandate of Arbitral Tribunal.

2. Applicant is a propriety concern engaged in the field of repairing, servicing and overhauling of all types of breakers, OLTC and control and relay panel works amongst other things. Respondent is said to be a leading consultant and licensed electrical contractor engaged in Power Transmission and Distribution Infrastructure

project works. Maharashtra State Electricity Distribution Company Ltd. (for short "MSEDCL") invited bids for supply, testing, transport, construction, erection, Testing and Commissioning of Numerical relays for protection of feeders, capacitors and incomers along with the communication facility on standard protocol, Automatic Voltage Regulators, Winding temperature Indicators, Oil Temperature Indicators for Power Transformers and its allied works including a five year guarantee in three towns of Pune, Kolhapur and Nashik. Applicant and Respondent executed Memorandum of Understanding on 04.03.2015 on certain terms and conditions and entered into a Joint Venture in respect of the said tender flouted by MSEDCL. As a result of which, work order came to be awarded to them on 14.05.2015. Agreement between Applicant and Respondent contains arbitration clause and as dispute arose between the parties, notice dated 14.10.2020 was issued by Applicant to the Respondent through an advocate calling upon the Respondent to pay Rs. 61,02,257/- towards VAT and TDS refund along with interest at the rate of 24% per annum. Since there was no response to the requisition of the Applicant, the Applicant resorted to the dispute resolution mechanism as agreed in Clause No. 18 of the Memorandum of Understanding. A notice was therefore issued on

20.12.2020 invoking arbitration. By consent of the parties, Arbitral Tribunal was formed. On 31.07.2021, Applicant filed Statement of Claim and Respondent filed its defence and counter claim. The pleadings were completed on 25.03.202. An Application was filed under Section 16(2) of the Act on 29.11.2021 before the Tribunal. However, the Tribunal has rejected the said Application which has resulted into filing of Writ Petition No. 3021/2022 which came to be dismissed on 17.03.2022. On 17.07.2022, the then Presiding Arbitrator recused from the proceeding as he was elevated to the Bench. Hence, Application being Arbitration Application No. 22/2022 was moved under Section 11(6) read with section 15(2) of the Act before this Court. This Court, by order dated 21.04.2023 allowed the said Application and appointed Justice Shri S. P. Deshmukh (Retired) as Presiding Arbitrator. On 22.03.2024, Respondent through its advocate filed an Application seeking termination of the Arbitral Tribunal mandate in the light of expiration of the time limit mentioned in Section 29A of the Act. Applicant/Respondent to the said Application by filing reply dated 27.03.2024 contended that the time limit is not over. The Arbitral Tribunal, by order dated 09.04.2024 has held that an order would be

obtained from this Court for seeking extension of the mandate. Hence, this Application.

3. Learned counsel for the Applicant submits that though initially appointment of Arbitral Tribunal was with the consent of the parties, substitution of the Presiding Arbitrator has been done by order of this Court and therefore, this Court has jurisdiction to entertain the application for extension of the period of Arbitral Tribunal. It is submitted that infact the period of Arbitral Tribunal is not over however, since an application is moved by the Respondent to that effect before the Arbitral Tribunal, the present application is pursued for formal extension of time for completion of arbitration proceeding. It is his submission that after recusal of the earlier Presiding Arbitrator, the Arbitral Tribunal was practically defunct due to non-availability of the Presiding Arbitrator till 21.04.2023, so as per the arbitral law, the newly appointed Presiding Arbitrator was required to give his disclosure statement etc. and time is consumed in completion of formalities. The first meeting of the Arbitral Tribunal thereafter was conducted on 20.08.2023. It is submitted that in the peculiar facts of the case, it cannot be held that the tenure of the Arbitral Tribunal is over and in any case in the interest

of justice, the same is required to be extended by this Court. It is submitted that the language of Section 29A does not prohibit this Court from extending the time for the Arbitral Tribunal to pass an award even after period /term of Arbitral Tribunal is already over.

4. Learned counsel for Respondent, at the outset, raised objection to the maintainability of the Application before this Court. It is his contention that in view of definition of Court under Section 2(e) of the Act, the District Court which is the Court of ordinary original civil jurisdiction will have jurisdiction to entertain the Application. To substantiate his submission, he placed reliance on judgment of Hon'ble Supreme Court in case of Chief Engineer (NH) PWD (Roads) vs. M/s BSC & C and C JV in **Petition(s) for Special Leave to Appeal (C) No(S). 10544/2024**. He also referred to judgment of Andhra Pradesh High Court in case of SEW Vizag Coal Terminal Pvt. Ltd. vs. Board of Trustees for the Port of Visakhapatnam, **2024 SCC OnLine AP 1712**. It is his further submission that there are conflicting views on the subject of the various bench and a reference is pending before the Larger Bench in view of order passed in case of Sheela Chowgule vs. Vijay Chowgule.

2024 SCC OnLine Bom 1067, by this Court at Goa, to decide following issues :-

i) In the event of Arbitral Tribunal constituted by the High Court under Section 11(6), fails to complete the proceedings within the stipulated, Dash extended., where an application 2984 would lie that is the High Court or the civil court having original jurisdiction in case of a domestic arbitration ?

ii) In the event of Arbitral Tribunal consisting of 3 arbitrators is constituted as per Section 11(2) i.e. with agreement and consent of the parties, fails to complete the proceedings within the stipulated/extended., where an application under 20 section 29 a 4 would lie that is before the High Court or the civil court having original jurisdiction in the case of domestic arbitration ?

It is his further submission that in view of judgment of the Hon'ble Apex Court in case of Chief Engineer (NH) PWD (Roads) (supra), this Court has no jurisdiction to entertain the Application and hence it be held accordingly. On merits, it is submitted that the pleadings before the Tribunal were completed on 25.03.2022 and thereafter the Presiding Arbitrator recused himself from the proceeding. Substituted Presiding Arbitrator was appointed by order of this Court dated 21.04.2023 passed in Arbitration Application No.

22/2022 and the said order was communicated to the Presiding Arbitrator on 12.05.2023. It is contended that the mandate of the Arbitral Tribunal has already expired and the Application is filed after two years of completion of the pleadings and thus, the prayer sought by the Applicant cannot be granted. To support his submissions, he placed reliance on judgment of this Court in case of Mahaveer Realities & others vs. Shirish J. Shah, MANU/MH/3503/2023. He further canvassed that there is statutory bar for invocation of Section 29A after expiry of the mandate. On these amongst the other submissions, dismissal of the Application is sought.

5. This Court has carefully gone through the written notes of arguments and judgments relied upon by the parties.

6. At the outset, objection raised by the Respondent with regard to maintainability of the Application needs to be dealt with. The first contention of the Respondent is that there is reference made to Larger Bench by this Court in case of Sheela Chowgule (supra) owing to divergent views taken by this Court in case of K.I.P.L. Vistacore Infra Projects J.V. vs. Municipal Corporation of the city of

Ichalkarnji, **AIRONLINE 2024 BOM 327**, and Marmugoa Port vs Ganesh Benzoplast Ltd, in Writ Petition No. 3/2020. Prima facie perusal of these two judgments show that in case of K.I.P.L. Vistacore Infra Projects (supra), Arbitrator was appointed by High Court under Section 11 of the Act and thereafter application for extension under Section 29A was filed before High Court. Whereas, in case of Mormugoa (supra) Arbitral Tribunal was appointed by consent of parties and application for extension is filed before District Court.

7. In the instant case, admittedly, initial appointment of Arbitrator was by consent of both parties, but substitution of the Presiding Arbitrator has been done by this Court by order dated 21.04.2023 on Arbitration Application No. 22/2022, under Section 15 read with Section 11 of the Act. Thus, issue involved in the present case is altogether different than the one referred to Larger Bench so also circumstances and facts of case in hand. This Court, therefore, finds no impediment in deciding this Writ Petition and issue raised by Respondent, as well.

8. In order to appreciate the submissions of rival parties, it would be necessary to take into consideration relevant provisions of the Act. Section 2(e) of the act defines 'Court' which reads thus :

2. Definitions - (1) In this part, unless context otherwise requires -

2(e) "Court" means-

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) x x x

Section 11(6) of the Act empowers this Court to appoint an Arbitrator in case a party fails to act as required under the procedure laid down in the agreement or where two Arbitrators are appointed and they fail to reach an agreement for appointment of Presiding Arbitrator. Section 15 provides for substitution of Arbitrator. Thus, conjoint reading to Sections 11 and 15 of the Act

indicates that it is the High Court which can appoint Arbitrator in case parties fail to appoint and in any event order of substitution of Arbitrator can be passed by High Court only.

9. Section 29A of the Act deals with the time limit for the arbitral award which reads thus :-

29A. Time limit for arbitral award

(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator (s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s)

appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator (s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.]

10. It is sought to be argued on behalf of the Respondent that the Court as per definition of Section 2(e) of the Act would be a Principal Civil Court of original jurisdiction in the District and includes High Court in exercise of its ordinary civil jurisdiction. Thus, it is the contention of Respondent that since this Court does not exercise Ordinary original civil jurisdiction at Aurangabad, Application under Section 29A of the Act is not tenable. According to

the Respondent, the same shall lie before the Principal Civil Court of original jurisdiction i.e. District Court, Aurangabad.

11. This argument solely rests on text of Section 2(e), however in view of wordings of Section 2(1) of the Act, "In this part, unless the context otherwise required", it is thus clear that the intention of the legislation is not to define the term 'Court' in *stricto sensu* but the said definition would have contextual application rather than textual. Thus, the definition would not be considered textually but contextually, meaning thereby depending upon the circumstances of each case, i.e. context of the case, definition of 'Court' would vary.

12. Section 11(6) of the act empowers this Court to appoint Arbitrator if the party fails to act as required under the procedure within 30 days of receipt of request by one party from the other party so agreed. There cannot be any dispute about the fact that this Court in exercise of its appellate jurisdiction also is empowered to appoint Arbitrator. Power to appoint Arbitrator also includes power under Section 15 of the Act to substitute Arbitrator. In fact, such power is wide enough to cover a situation of appointment of

Arbitrator by parties but substitution thereof is by order of this Court. Once the Arbitrator is either appointed by this Court or substituted by this Court, this Court only would be the competent to entertain an Application under Section 29A of the Act. No other interpretation would be permissible owing to the scheme of the provisions of Section 29A. Any other interpretation of provision would de hors legislative intention. Section 29A not only empowers Court to extend the time limit for arbitral award but proviso to sub-section 4 enables the Court to order reduction of fees of Arbitrator in stipulated situation. Sub-section 7 provides for imposition of costs upon any party. Most importantly, according to sub-section 6, while extending period of Arbitration, it is open for the Court to substitute one or all Arbitrators. It would lead to anomalous situation in case of appointment of an Arbitrator or substitution thereof by Supreme Court in case of International Arbitration and by High Court in case of Domestic Arbitration, such Arbitrator can be substituted by Principal Civil Court. Such substitution would be contrary to the judicial hierarchy, as the Court which is under superintendence of the High Court would reverse the order of appointment or substitution of Arbitrator passed by High Court.

13. No doubt, situation would be altogether different when there is no appointment or substitution of Arbitrator by this Court or Supreme Court, and the Court as defined under Section 2(e) of the Act would be the Principal Court of civil jurisdiction in a District. At this stage, it would be useful to refer to the observations of this Court in case of K.I.P.L. (supra), made in fact situation identical in the present case, which reads thus :

“19. In the present case, it is evident that though the appointment of the Arbitrator by the Division Bench of this Court, may not be in the circumstances contemplated either under Sub-Section (4) or Sub-Section (6) of Section 11, but it was a Petition, when the Municipal Council agreed to the disputes being taken to Arbitrator, and for which the consent was accorded by the Petitioner, this Court exercised the power of appointing the Arbitrator.

Nonetheless, the appointment of Arbitrator is by the High Court by assuming the power under Section 11(6) of the Act though the preceding events justifying the exercise of power under 11(6) of the act are not made out, reading of the order of Division Bench make it very apparent that upon the consensus being arrived between the parties that the dispute has to be taken for arbitration, the High Court appointed the Sole Arbitrator with the terms and conditions of his appointment being

stipulated in the order and most important condition being it requested the Arbitrator to expeditiously conclude the proceedings within a period of one year i.e. the timeline for the arbitration proceedings was stipulated by the High Court while appointing him.

In such scenario, it would be anomalous to consider that though the High Court has appointed the Arbitrator and defined the time line within which, he shall decide the proceedings, the application for extension of time under Section 29A shall be decided by the Principal District Court of Pune.

20. *Another aspect which persuade me to accept the submission of Mr. Patil is the words in Section 2 sub section (1), "Unless the context otherwise requires".*

It is the basic rule of interpretation of statute that the textual interpretation should be matched with the contextual one as the interpretation must depend upon the text and and the context as if the text is the texture, context is gives it the colour and neither of it can be ignored.

The statute when enacted can be best interpreted when the object for which it is enacted is kept in mind. If the statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such

context, its scheme, the words may take colour and appear different than when the statute is looked at without the glasses provided by the context.

21. In the recent decision, the Apex Court, in case of **Renaissance Holdings Inc. vs. B. Vijaya Sai & Ors., (2022) 5 SCC 1** has succinctly set out the rule of interpretation with reference to the contextual one in the following words :

“66. It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

Hence, I am persuaded to accept the submission of Mr. Patil that the words used by the Statute in Sub Section (1) or (2) are not otiose when it permits the definitions to be read in the manner provided, unless the context otherwise requires and if the meaning assigned to term ‘court’ in Section 2(1)(e) is introduced in Section 29A, it would run contrary to the intention of legislation and defeat the purpose of the provision by permitting a

‘court’ as defined under section 2(1)(e) to partake the power vested in the High Court to extend the mandate of the Arbitrator and substitute the Arbitrator or Arbitral Tribunal itself.

There is similar view taken by this Court in case of Indicus Software Pvt. Ltd. vs. Infinite Uptime India Pvt. Ltd. in Arbitration Petition No. 179/2022 and in paragraph No. 16 of judgment it is held thus :-

“16. In the present case, admittedly, this Court appointed the sole arbitrator by order dated 28/6/2021, passed in Arbitration Petition No. 60/2021. But when the sole arbitrator recused, by order dated 22/10/2021 in Arbitration Petition No. 83/2021, this Court substituted the sole arbitrator. Therefore, the application for extension of mandate under Section 29-A of the said Act, could have been filed only before this Court. Hence, the preliminary objection pertaining to jurisdiction, raised on behalf of the respondent, is rejected.

,If judgment of Hon’ble Supreme Court, relied upon by Respondent , in case of Chief Engineer (NH) PWD (Roads) (supra) is perused, then it shows that the Hon’ble Supreme Court, while upholding the order passed by Meghalaya High Court, has held that powers under Section 29A(4) of the Act vest in the Court as defined

under Section 2(e) of the Act and it is the Principal Civil Court of original jurisdiction in a District which includes High Court provided the High Court has ordinary original civil jurisdiction. Backdrop in which the order was passed is challenge to the order of Meghalaya High Court wherein there was no appointment or substitution of Arbitrator by the High Court in exercise of powers under Section 11 or 15 of the Act. In this situation, Meghalaya High Court has held that the jurisdiction would lie to the Principal Court of ordinary jurisdiction in a District for extension of period of arbitration under Section 29A of the Act and Hon ble Supreme court upheld this order, with observations above. Apparently, there is no decision on the point that even in case of appointment or substitution of Arbitrator by High Court, Principal Civil Court, would be 'Court' to exercise powers under Section 29A of the Act.

14. On the point of continuation of the Arbitration proceeding beyond the term/mandate of Arbitral Tribunal, it is sought to be argued that the term of Arbitral Tribunal was over on expiry of one year from the completion of pleadings and as Tribunal did not call upon parties to submit fresh pleadings, the said term

comes to an end in one year after 25.03.2022. It is thus contention of the Respondent that the mandate of Tribunal cannot be extended under Section 29A of the Act. To support this submission, reliance is placed on judgment of this Court in case of Mahavir Realities (supra). In paragraph Nos. 14 and 15 it is held as under :-

“14. Having considered the submissions, in my view, it is clear from Section 29A sub Section 1 read with sub section 3 of the Arbitration Act, that the award is required to be made by the Arbitrator within a period of 12 months from the date of completion of pleadings and that the parties may by consent extend the period specified under Sub Section 1 for making award for a further period not exceeding six months. Thus, there can be no further extension of the mandate of the arbitrator beyond a period of six months from the expiry of one year for the passing of the award. Further, this provision is not derogable and hence Section 4 of the Arbitration Act has no application.

15. The decisions relied upon on behalf of the Petitioner are inapplicable. In facts of those cases, the Courts held that there was a waiver of the arbitration agreement and not of a statutory provision which is non derogable. Further, the decision initially relied upon on behalf of the Petitioner, namely the decision of this Court in **Jayesh Pandya (Supra)** has been set aside by

the Supreme Court in the Appeal filed therefrom. The Supreme Court has held that the essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been waiver of valuable rights where the circumstances show that what was done was involuntary. The parties have to stand by the terms of contract including the arbitrator.

15. This Court, in above judgment was seized with issue of extension of period beyond six months by consent of parties under Section 29A(3). As against this, in the instant case, the proviso of Section 29A(4) is placed in service. This provision undisputedly provides power to the Court to extend the period of Arbitration not only during subsistence of mandate but also after expiry of the said period. The judgment in case of Mahaveer Realities (supra) has no applicability to the case in hand.

16. It is pertinent to note that Respondent had moved an application before the Arbitral Tribunal claiming that with efflux of time, mandate of Arbitration stands terminated. Arbitral Tribunal,

while dealing with the said contention, has observed in paragraph Nos. 22 and 23 of order as under :-

“22. The analogy as adopted about 219 days having been completed on 28th December, 2023 does not have a support with reference to any provision. Though reference to section 15(3) is being made, it is difficult to consider that it sources either commencement of period of mandate anew or its resumption from initial stages. As far as continuation or commencement of running of period of mandate before reconstituted tribunal, the parties have not been able to support submissions with any reliable material. Submissions alone and/or logic and/or analogy in the given situation would not subserve the purpose underlying present arbitration proceedings.

23. Further continuation in the scenario, in the absence of extension of mandate is unlikely to serve a fruitful purpose. Proceeding further would not be conducive to the purpose underlying and may give rise to lengthening/abortion of proceedings on the ground raised in the application of 22-03-2024 by the original respondent. It is for the parties to make proper approach seeking extension of mandate in order to avoid obstructions on that ground, and have arbitration on merits or claims on either side.

17. This order of Arbitral Tribunal has not been taken exception to. This Court, therefore, cannot go into correctness or otherwise thereof. Suffice it to say that irrespective of situation, whether mandate of Arbitrator subsists or expired, this Court can exercise power under Section 29A(4) to extend the same in appropriate case. In this regard, reference can be made to the judgment of this Court in case of Nikhil H. Malkhan and others vs. Standard Charter Investment & Loans (D) Ltd., **LAWS(BOM)-2023-11-20**, wherein it is held that “the purpose of phrase “either prior or after expiry of period so specified” under Section 29A would be defeated if it was held that the Court could exercise its power of extension of mandate only if application was made prior to the expiry of mandate of Tribunal and as such Court cannot be rendered powerless merely on the ground that the application under Section 29A was moved after expiry of mandate.”

18. In view of above discussion, it is held that an application moved even after the expiry of mandate of Arbitrator is entertainable under Section 29A of the Act.

19. The Whole purpose of the Act is to provide effective and speedy remedy to the parties for adjudication of disputes between them. The scheme of Section 29A aims at extension of time of mandate, firstly by consent of parties as per Section 29A(3) and thereafter with intervention of Court under Section 29A(4). This provision enables the Court to pass order in order to ensure that arbitral proceedings reaches to logical conclusion.

20. Perusal of record placed before this Court indicates that it is at the instance of Arbitral Tribunal, present Application is moved. Neither there is any contention of rival parties nor there is any material on record to hold that deliberate delay is caused in decision of Arbitration. The pleadings are already completed. In view of the fact that claim filed by Applicant as well as counter claim of Defendant are pending before Arbitral Tribunal for adjudication, it is in the interest of both sides that by extending mandate of Arbitral Tribunal, the same is adjudicated upon. Moreover, having regard to the aim/object of the act of quick adjudication of dispute and to make sure that the parties are not pushed to further process which may lead to defeat very purpose of Arbitration proceeding, sufficient grounds are made to seek extension of mandate of Arbitral Tribunal.

21. In view of the above, Application is allowed and mandate of Arbitrator is extended for the period of six months from 01.08.2024. The Applicant is directed to communicate this order to the Arbitral Tribunal on or before 30.07.2024 in writing.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. Learned counsel for Respondent seeks stay to the order for a period of four weeks.

2. Learned counsel for Applicant opposes the said request.

3. Having regard to the aim and object of Arbitration and Conciliation Act and observations made hereinabove, no case is made out to grant stay to the order.

(R. M. JOSHI)
Judge

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