



THE IMPORTANCE OF JUDICIAL PROTECTION OF THE RIGHTS OF LIMITED LIABILITY COMPANY PARTICIPANTS IN INSOLVENCY PROCEEDINGS

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Abstract: *This article examines the theoretical and practical significance of judicial protection of the rights and legitimate interests of participants in a limited liability company (LLC) during insolvency proceedings. The study analyzes the impact of insolvency proceedings not only on the financial and economic condition of the company but also on the corporate and proprietary rights of its participants, including circumstances in which the exercise of such rights may be restricted.*

The study concludes that judicial protection of participants' rights during insolvency proceedings serves not only to restore violated rights but also to ensure legality in corporate governance, prevent the abuse of corporate rights, protect participants' proprietary interests, and maintain an appropriate balance between the interests of the company and its creditors. The article puts forward theoretical conclusions and practical recommendations aimed at improving the effectiveness of judicial protection of participants' rights during insolvency proceedings.

Keywords: *insolvency, limited liability company, participant, corporate rights, proprietary rights, judicial protection, corporate governance, creditors, share, legitimate interests.*

The recognition of a debtor by a court as insolvent due to his inability to satisfy the claims of his creditors on monetary obligations and (or) to fulfill his obligations on compulsory contributions entails consequences for the company, in particular for its governing bodies, including its participants, that are significantly different from ordinary civil law relations. In this case, it is necessary to understand the participants of the

company and the company itself as separate entities, taking into account the fact that their interests and goals may differ, and their specific rights and obligations. Nevertheless, it can be seen that the legal norms regulating relations on insolvency do not fully ensure the balance of interests between the participants, the company itself and the creditors. This is especially evident in the practice of law enforcement, in cases



where conflict situations arise as a result of a conflict of interests between creditors and participants.

When a company is declared insolvent, the theory of shareholder primacy, which states that the management of a company should primarily serve the interests of its founders, who founded it, financed it, and set the basic principles of its operation, is "undermined" in every way. Simply put, the shareholder primacy theory gives way to the creditor priority theory, and insolvency restricts corporate governance based on the creditor priority theory. In the words of J. Hardman, insolvency is a "dark spot" of corporate law (management)[1]. The logical basis of this theory is the contract theory, which states that a company must repay a monetary obligation it has contracted under a contract in accordance with the terms of the contract. This theory was first applied in the case of *West Mercia Safetywear Ltd v Dodd* [2]. *West Mercia Safetywear Ltd* was a division of *A. J. Dodd & Co Ltd* (*Dodd Ltd*) and both companies were managed by Mr. Dodd as a director. In 1984, when both companies were in financial difficulties, Dodd transferred £4,000 from *West Mercia Safetywear Ltd* to *Dodd Ltd* to reduce his personal financial liability. However, after *Dodd Ltd* went bankrupt, Mr. Dodd was ordered to pay £4,000 in damages. The court documents state that he acted in his own best interests when the company was in financial difficulties, disregarding the interests of its creditors. This

principle was later reinforced in the Companies Act of 2006 in the UK. Accordingly, while the main objective of a company in its normal course of business is to make a profit, the main objective in bankruptcy proceedings is to satisfy the claims of creditors. According to this theory, no profit can be made until the debts owed to creditors are paid. Most scholars point to this as a consequence of the principle of equity.

The theory of the priority of creditors' rights in the insolvency process is also reflected in our national legislation. Because with the introduction of insolvency proceedings, the rights of participants are sharply reduced. In particular, according to Article 13 of the Law "On Insolvency", if a participant has surplus funds after full settlements with creditors, he is entitled to receive dividends, according to Article 109, from the moment of the introduction of the external management procedure, the powers of the debtor's management bodies are terminated, according to Article 141, from the moment of the court's decision to declare the debtor bankrupt and initiate liquidation proceedings, the debtor's management bodies are removed from performing the functions of managing and disposing of the debtor's property, the management of the debtor's affairs is entrusted to the liquidation manager, and the owner's powers to manage and dispose of the debtor's property are terminated. During the liquidation proceedings, the debtor's



parties have only the limited rights of the parties in the insolvency proceedings.

As a rule, a company member does not have the right to appeal against court decisions issued against the company. This rule is also established in the doctrine of The Doctrine of Separation of Management and Ownership [3], which relates to the rights of a company member. In such a case, when the court grants the application of a creditor or an authorized body that filed an insolvency petition against the debtor company and the debtor company is declared insolvent, there are different approaches to the issue of the right of a participant in the debtor company to appeal the court's decision, as well as the right to apply to the court during the insolvency proceedings. For example, according to A. Malikov, the preservation of the rights of participants in the management of a legal entity when signs of bankruptcy appear should depend on who filed the application to declare the company bankrupt with the court. If the application to declare the company bankrupt was filed by a creditor and rehabilitation procedures were chosen for the company, then since it is not the participants, but the creditors, who need to "get the company back on its feet", the decision to resume the company's activities should be included in the competence of the creditors.[4]. Without disagreeing with the legal expert, it should be noted that the appearance of signs of bankruptcy in a company, regardless of who initiated the bankruptcy case, restricts a number of fundamental

rights of participants, as well as creates certain rights. Restrictions on the exercise of participant rights vary depending not on the person initiating the bankruptcy, but on the insolvency procedure.

We have also witnessed the lack of a uniform practice in court proceedings in this regard. In some cases, when a company participant appealed against a court decision to declare a debtor company insolvent, the appeal (cassation, review) appeal was rejected (ignored) on the grounds that the participant was not authorized to sign the appeal, in accordance with the Law "On Insolvency" and the relevant articles of the Code of Economic Procedure (Articles 63, 265, 269, 272). In some cases, the courts considered the appeals filed by the participants on their merits and made appropriate decisions. According to Article 141 of the Law "On Insolvency", from the moment the court adopts a decision to declare the debtor bankrupt and initiate liquidation proceedings, the powers of the debtor's manager are terminated and the management of the debtor's affairs is entrusted to the liquidator, and according to Part 2 of Article 51, judicial acts on the insolvency case are immediately executed, unless otherwise provided for in this Law. According to the law, the authority to conduct business on behalf of the company without a power of attorney falls within the exclusive authority of the director, and when the company is declared insolvent, his powers are terminated, and he does not have the right



to appeal against the judicial act. In addition, the fifth part of Article 141 of the Law "On Insolvency" stipulates that in the process of liquidation proceedings, participants (founders) of the debtor shall have the rights of persons participating in insolvency proceedings. In our opinion, this norm fully guarantees the participant the right to appeal the court document for reconsideration.

Also, based on the explanation given in Article 3 of the Law "On Insolvency", in the process of insolvency proceedings, not the founders of the debtor, but their representatives, are considered participants in the meeting of creditors or the creditors' committee, and the second part of Article 38 establishes that not the founders (participants) of the debtor, but their representatives may be persons participating in the insolvency proceedings. Based on this, in paragraph 13.1 of the Plenum Resolution of 23.06.2025, an explanation was given that the minutes of the meeting of the founders are the basis for the courts to participate in the bankruptcy case as representatives of the founders of the debtor. However, the Law does not contain clear explanations regarding the procedure for selecting a representative and at what stage of bankruptcy, as well as the procedure for formalizing the powers of the representative. Practice shows that the candidate for the representative of the company's participants is approved by election at the general meeting of participants during the monitoring process, following the

initiation of bankruptcy proceedings against the company. In our opinion, the inclusion in the Law of the norms related to the election of the representative of the company's participants at the general meeting and the introduction of a requirement for notarization of the power of attorney issued to the representative of the company's participants during the bankruptcy proceedings (the requirement for the power of attorney of the participant's representative is proposed in accordance with the law analogy) will create a basis for the exercise of the rights of the participants without notarial procedures.

It should be noted that, based on the requirements of the Law and the explanation given in the Plenum resolution on the application of these norms, the courts do not consider applications (complaints) filed by the participants themselves in the bankruptcy proceedings. In the event of appeals to higher courts against cases considered and resolved by certain courts, the court documents are canceled on the grounds that the founders of the company do not have such authority. In other words, the courts limit the personal participation of the participant in the insolvency proceedings. This situation was also confirmed in the disputed case initiated in the Kumkurgan inter-district economic court and revised up to the higher instance court. According to the circumstances of the case, the application of "A.New Drip" LLC to declare "T.Jayxun Cluster" LLC insolvent was



satisfied, and the procedure for liquidation proceedings was introduced against the debtor. Dissatisfied with the actions of the court administrators during the liquidation proceedings, the founder of the debtor company N. Abdugarimov applied to the court with a request to declare the resolution No. 1 of the first meeting of creditors dated August 7, 2023 invalid. This application was considered in the first instance court on its merits, and the application was refused to be satisfied. The decision of the appellate and inspection instances of the judicial board for economic cases of the Surkhandarya regional court left the ruling of the first instance court unchanged. Based on the complaint filed by N. Abdugarimov, the founder of the debtor company, to the Supreme Court, all the court documents accepted in the case were canceled, and N. Abdugarimov's application was left unheard [5]. The reasoning of the decision states that, in accordance with the provisions of the legislation, a person participating in an insolvency case may be a representative of the debtor's participants, not a debtor's participant, and that the lower courts erred in considering the merits of the application filed by the debtor's participant, in violation of substantive law. In another case considered by the economic affairs panel of the Tashkent City Court, the appeal filed by the founder of the LLC Yu. Zakharova against the decision of "SUPER POULTRY FEED" LLC on the application to declare "PRIMUS AND

OPTIMUS" LLC bankrupt was terminated by the ruling of the court of appeal. The court decision contained a list of persons participating in the bankruptcy case, and the founder (participant) was cited as the reason for not being considered a person participating in the case.[6]

According to the general content of the Law "On Insolvency", the purpose of establishing the direct participation of debtor participants in the insolvency case and the possibility of their taking any actions only through a representative is to prevent the uncoordinated participation of a large number of representatives of debtor participants with relatively small shares. Legal scholar A. Egorov emphasizes that it is not for nothing that the legislator limited the personal participation of company participants in the bankruptcy proceedings and transferred the exercise of their collective rights to one person (representative), otherwise there could be more participants than creditors in the bankruptcy case[7]. Partially supporting the opinion of a colleague, we believe that the application (application) of this rule to an LLC with a limited number of participants can lead to a violation of the rights of the participants. In particular, in the event of a dispute between the participants, there is no possibility of their own free will to elect a representative based on their agreement. The explanation given in the Plenum resolution for LLC participants with a corporate dispute is a "death sentence". In



addition, granting rights only to representatives in the insolvency process does not comply with the fundamental principle of civil law regarding the participation of subjects in civil legal relations personally and/or through representatives. In such a situation, the absence of the status of a representative of the debtor participants should not prevent him from exercising his right to judicial protection, including the protection of his legal position in cases of violation of the law during bankruptcy proceedings. Therefore, it is necessary to clarify that in the event of a dispute between the participants of an LLC, if it is not possible to reach a specific agreement on representation, that is, if a certain participant opposes the representative proposed on behalf of the participants within the framework of the insolvency case of the company, this participant may apply to the court with an application for the right to participate in the bankruptcy case independently of other participants in order to exercise his rights. This will unify judicial practice and ensure the right of participants to directly apply to the court even if bankruptcy proceedings are introduced against the company. Also, the issue of the participant's personal participation in the insolvency process requires a thorough study and supplementation with norms guaranteeing his right to judicial protection. Because a participant is an interested person in relation to a debtor legal entity and if his rights are violated within the framework of the insolvency

case, he cannot be limited in his ability to protect his rights. In particular, in a company with a single participant, it should be determined that this participant exercises his rights directly without representation.

As is known, during the insolvency proceedings, the court receiver maintains a register of creditors, which indicates the determined amount of the creditor's claims and the priority of satisfaction of each claim. The debtor's register of creditors must include all legal or natural persons to whom the debtor is liable for the performance of his monetary obligations, including the participants of the debtor company. In practice, there are also cases when court receivers refuse to include a participant in the register of creditors in the appropriate priority, even if he is a creditor of the company. In one of such cases, in a bankruptcy case, the founder (controlling person) of the company applied to the arbitration court with an application for inclusion in the register of claims for the return of the loan granted to the company. The courts of first and appellate instance, taking into account the common economic interests of the debtor and its founder, concluded that in this case the creditor is the founder and that his claim cannot compete with the claims of other creditors who do not have the practical ability to give mandatory instructions to the debtor or otherwise determine his actions, and made a decision to refuse to satisfy the application. The case was considered in the district court, which ruled that the



priority of satisfaction of creditors' claims cannot be reduced solely on the basis of the debtor being a participant (controlling person), and on this basis the court documents were canceled [8]. In this case, the court's decision is legal and justified, as Article 3 of the Law "On Insolvency" states that institutions (participants) of a debtor legal entity cannot be creditors only for obligations arising with their participation. In this regard, V. Vitryansky emphasizes that the rights of a participant arising from corporate relations are internal in nature and cannot be considered on a par with external obligations of a property nature, and draws attention to the fact that the only right of the participants is to declare their rights to the property remaining after the obligations to creditors are satisfied [9]. The obligation of a participant to provide funds to a company under his control by concluding a loan agreement and to return the funds received by himself is not considered a debt for obligations arising from his own participation. In addition, there are no rules in the legislation that provide for an unconditional (automatic) reduction in the priority of satisfaction of non-corporate claims of creditors who are among the persons controlling the debtor.

The law stipulates that in case of signs of insolvency in the company, the obligee of the debtor must notify the participants of the debtor in writing, as well as the obligation of the court administrator to inform the participants about the meeting of creditors, ensures

the implementation of passive rights of the participant. However, if the obligation of the participant to inform the company about certain circumstances regarding the state of insolvency is not fulfilled by the responsible persons, the lack of responsibility measures against them is not established, which creates obstacles in the implementation of the participant's rights during the bankruptcy process. In the event that the rights of the participant are limited in the law, the introduction of norms that cancel the responsibility of the participant and create certain consequences for the responsible persons who have allowed inaction in such cases, serves to ensure and observe the rights of the participants in the process of insolvency.

In the process of introducing the institution of insolvency in relation to each debtor company, creditors in almost all cases try to hold the company's participants subsidiary liable for the company's debts. From this point of view, the issue of protecting the rights of participants in the process of insolvency of the company, protecting them from subsidiary liability is one of the most important and relevant areas in the theory and practice of corporate law. In this regard, the fact that participants are not liable for the obligations of the company is considered the main principle. Participants are liable for losses associated with the activities of the company only to the extent of their contributions. A norm of this nature in our national legislation exists in both



Anglo-American law and the continental legal system. In particular, in countries with a developed corporate law system, this rule is recognized as the Doctrine of Separation of Management and Ownership, and the issue of the liability of the governing bodies of a legal entity also arises from the terms of this doctrine. In addition, the famous “Solomon case,” which was recognized as a precedent in English law and demonstrated the separate liability of a legal entity and its owner, and also gave impetus to the formation and development of the concept of corporate personality, established that the liability of a legal entity does not directly entail the liability of its owner[10].

However, there are also cases in the legislation that provide for subsidiary liability of a participant for the obligations of the company. As E. Krotova emphasizes, the term “subsidiary liability” is somewhat conditional. This is because the actions of an additional debtor do not always contain an element of illegality that would serve as a basis for applying civil liability. This situation allows us to assess the legal essence of subsidiary liability from two perspectives: in some cases it manifests itself as a mechanism for protecting rights, and in other cases as a form of legal liability [11]. Agreeing with the lawyer, the subsidiary liability of a participant for the obligations of the company is a legal liability in relation to the participant. Because the participant is subsidiary liable for the obligations of the company

only if the insolvency of the company occurred due to the participant's illegal actions. Due to the lack of separate statistical reporting on cases on the subsidiary liability of participants for the obligations of the company, and the fact that such cases are considered not as a separate dispute, but as part of the insolvency case, it is not possible to determine the number of such cases, in what percentage of the cases on bankruptcy, the issue of the liability of participants was considered. According to surveys conducted among judges, cases on the subsidiary liability of participants in the insolvency process account for about one percent of the total number of cases.

According to the legal scholar V. Khokhlov, liability arises as soon as a person commits a crime. For this, it is not necessary to separately determine additional conditions (fault, damage, causal connection, etc.). In his theory, the crime itself is a sufficient basis for liability. However, this opinion is controversial, and in particular, in order to hold a participant to subsidiary liability in the insolvency process, the participant's illegal actions that led to the insolvency of the company and the (full) satisfaction of the creditors' claims as a result of this must be the cause. When analyzing court practice, disputes are resolved taking into account not only the participant's illegal actions, but also the legal consequences, in order to hold a participant to subsidiary liability. For example, during the liquidation of the debtor LLC "ZAMON



NUR GROUP", the creditor filed a petition with the court within the bankruptcy case of LLC "ARTUM INVEST" requesting to hold A. Sadikov, a participant of the debtor, to subsidiary liability. During the court hearing, it was noted that A. Sadikov transferred 392,000,000 sum to his plastic card from the account of "ZAMON NUR GROUP" LLC, 440,000,000 sum to "ZIP UZ" LLC, 292,767,903 sum under the guarantee for the loan of "Daler fly travel" LLC, 180,000,000 sum to "Surayyo construction" LLC, 140,000,000 sum under the guarantee to JSC Xalq Bank, 498,234,196.44 sum to "Daler development" LLC, 360,000,000 sum to "O'zagrolizing" JSC, a total of 2,303,021,099.44 sum. The court of first instance, taking into account this circumstance, held ASadikov, a participant in the debtor company, subsidiary liable for the debt of LLC "ZAMON NUR GROUP" in the amount of 2,303,021,099.44 sum. However, the cassation court of the Tashkent City Court for Economic Cases overturned the ruling and refused to satisfy the claim. The court document indicated that the grounds provided for in Article 70 of the Law "On Insolvency" were not confirmed [12].

Article 243 of the Law "On Insolvency" provides an explanation that illegal actions that have led to insolvency are violations of the law related to the intentional actions of officials or the owner of the debtor's property or creditors or other persons that have caused damage

to the debtor or creditors, and a list of such illegal actions is provided. In our opinion, it is necessary to revise this norm from the point of view of legislative technique and transfer it to the basic concepts provided for in Article 3, rather than as final rules.

Subsidiary liability of a participant arises due to the incomplete satisfaction of creditors' claims in the following cases:

- if the participant caused damage to creditors through transactions concluded in his own interest or on the instructions of the participant;

In this case, the participant must have the opportunity to influence the activities of the company, a certain transaction must have been concluded on the basis of the participant's actions or instructions, and the transaction must have caused significant damage to the property rights of creditors. Resolution No. 13 "On Certain Issues of the Application of the Law of the Republic of Uzbekistan "On Insolvency" by Economic Courts" indicates that the transaction concluded by the debtor is declared invalid by the court and the consequences of the invalidity of this transaction cannot be applied, as a basis for holding the participant to subsidiary liability. In our opinion, the main attention should be paid to the participation of the founder in the conclusion of the transaction. In particular, the court's declaration of invalidity of a transaction concluded in the course of the company's financial and economic activities and in the conclusion



of which the participant did not have influence does not entail subsidiary liability for the participant. From this point of view, the explanation given in the Plenum resolution should be clarified in order to avoid unjustified subsidiary liability of participants for a transaction concluded by the company.

- if the existence of signs of false insolvency, concealment of insolvency, or intentional bringing of the debtor to insolvency as a result of the joint actions of the beneficiaries and affiliated persons is established by a legally binding court document;

It is noteworthy that the “Rules for Determining Signs of False Bankruptcy, Concealment of Bankruptcy and Intentional Induction of Bankruptcy” approved by the Cabinet of Ministers Resolution No. 224 of August 14, 2023, is not based on the conclusion of the court receiver on the identification of signs of false bankruptcy, concealment of bankruptcy and intentional induction of bankruptcy, but rather on the fact that this situation must be determined by a court document. However, there are cases where the courts have interpreted this clause more broadly. In particular, an example of this is the case of holding H. Kazakov and A. Nabirayev, participants of the insolvent LLC “ZOMIN ZAMONA QURUVCHI”, to subsidiary liability within the framework of the insolvency case of the company. According to the circumstances of the case, the non-payment of the debt of 149,150,889.25 sum to “ARTUM LEASING GROUP”

LLC was caused by the illegal actions of the debtor company participants H. Kazakov and A. Nabirayev. As it turned out, during the investigative actions conducted by the Zomin district department of the Department, although the actions of the participant of “ZOMIN ZAMONA QURUVCHI” LLC H. Kazakov contained the elements of the crime provided for in Part 1 of Article 1811 of the Criminal Code, which is expressed in the intentional insolvency of the company, however, due to the fact that this crime falls into the category of crimes of low social danger and the statute of limitations for bringing the person to responsibility has expired, the initiation of a criminal case was refused without resolving the issue of guilt under Paragraph 1 of Part 1 of Article 84 of the Criminal Code. By the ruling of the court of first instance, the satisfaction was refused due to the fact that the illegal actions of the participants of the debtor company were not confirmed by a judicial document. However, by the decision of the court of the investigative instance, the judicial documents were partially canceled, and since the actions of the founder of “ZOMIN ZAMONA QURUVCHI” LLC, who owns a 10% stake, Kh. Kazakov, contained elements of a crime stipulated in Part 1 of Article 1811 of the Criminal Code, which is expressed in the intentional insolvency of the company, the decision of the Zomin district department of the Department for Combating Economic Crimes under the Prosecutor General's Office of the



Republic of Uzbekistan proved that the actions of Kh. Kazakov, a participant of the debtor company, were held subsidiary liable within the scope of the payable debt of "ARTUM LEASING GROUP" LLC, and 149,150,900 sum were recovered from him in favor of "ARTUM LEASING GROUP" LLC [13]. In our opinion, since the subsidiary liability of a participant is not provided for for false insolvency, concealment of insolvency, or intentional insolvency of a debtor based on a decision of a certain body, paragraph 2 of part two of Article 70 of the Law "On Insolvency" cannot be interpreted broadly. Since the deadlines established for holding a participant subsidiary liable must also be taken into account.

- if the debt arising from the adoption of a court decision to hold a participant liable for violating legislative acts exceeds seventy percent of the total amount of claims included in the register of creditors' claims.

It was found that the only judicial practice on the application of this norm in judicial practice is correct.

Another important point is that subsidiary liability can be imposed on a participant only if the company's property is insufficient. Legal doctrine recognizes that an integral condition for subsidiary liability is that the creditor first makes a claim against the debtor company. The subsidiary liability of a participant in a company arises and its application can be discussed only in cases where the company has not fulfilled its obligation (has not fulfilled it to the required extent).

Within the framework of the insolvency case, the subsidiary liability of a participant in a company is a dispute resolved in accordance with Article 60 of the Law "On Insolvency", and the participant cannot be held liable for the company's obligations by changing the method and procedure for executing a judicial act. For example, the Bukhara region Shafirkan district department of the Bureau of Compulsory Enforcement under the Prosecutor General's Office of the Republic of Uzbekistan rejected the application of "Sultanabad Nodirjon Service" LLC to change the method and procedure for the execution of the court document and direct the collection of the debt to JSCB "Agrobank" to the personal property and other income of its founder U. Kadyrov on the grounds that the legislation does not provide for the method of directing the collection of a company's debt to its participant[14].

Conclusion

Judicial protection of the rights and legitimate interests of participants in a limited liability company (LLC) during insolvency proceedings constitutes one of the important legal instruments for ensuring the stability of corporate relations, safeguarding participants' interests, and maintaining a proper balance between the interests of the company and its creditors. Insolvency affects not only the financial and economic activities of the company but also the ability of its participants to exercise their corporate rights.



The judicial mechanism for protecting participants' rights during insolvency proceedings should primarily be aimed at preventing violations of rights, eliminating the consequences of unlawful conduct, and restoring the legitimate interests of the participant. In particular, actions or omissions of the company's management bodies, executives, insolvency practitioners, or other interested persons that violate participants' rights, as well as failures to comply with legal requirements in adopting corporate decisions, should be subject to effective judicial review.

From this perspective, ensuring a reasonable and fair balance between the subjective corporate rights of participants and the proprietary interests of creditors is of particular importance. The primary objective of insolvency proceedings should not be limited exclusively to

satisfying creditors' claims. It should also encompass the protection of the legitimate interests of the company and its participants and, where feasible, the implementation of measures aimed at restoring the company's solvency.

At the same time, the exercise of participants' rights in accordance with the principle of good faith is also of significant importance in judicial protection during insolvency proceedings. A participant should not use insolvency proceedings for the purpose of causing harm to the company or its creditors, unjustifiably prolonging the proceedings, or restricting the legitimate interests of other participants. Accordingly, the judicial protection mechanism should not only serve to restore a participant's violated rights but also prevent the abuse of corporate rights.

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