

SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 25.05.2023 AT 10:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/248/2023 IA (IBC)/583/2021 in CP (IB) No.384/7/HDB/2018
NAME OF THE COMPANY	Galada Power and Telecommunication Ltd
NAME OF THE PETITIONER(S)	Stressed Assets Stabilization Fund
NAME OF THE RESPONDENT(S)	Galada Power and Telecommunication Ltd
UNDER SECTION	7 of IBC

ORDER

Orders in IA 583/2021 pronounced, recorded vide separate sheets. The Resolution Plan is approved. Accordingly, IA 583/2021 is allowed and stands disposed of.

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MEMBER (T)

SJ

MEMBER (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.583 OF 2021
in
CP(IB) NO. 384/7/HDB/2018**

*[U/s. 30(6) and U/s. 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of
the IBBI (IRPCP) Regulations, 2016]*

**In the matter of:
M/s. Galada Power and Telecommunication Limited**

Sri Nitin Vishwanath Panchal

Resolution Professional of
M/s Galada Power and Telecommunication Limited
Admin. Office Galada Towers
301, Begumpet, Hyderabad – 500016

.... Applicant /
Resolution Professional

Date of Order: 25.05.2023

Coram:

Hon'ble Dr. Nandula Venkata Ramakrishna Badarinath, Member
(Judicial)

Hon'ble Shri Satya Ranjan Prasad, Member (Technical)

Parties / Counsels Present:

For the Applicant: Mr.VVSN Raju, Mr. Praveen Kumar Jain
Advocates

[PER : BENCH]

ORDER

1. The instant Application bearing IA No. 583/2021 is filed by the Resolution Professional of M/s. Galada Power and Telecommunication Limited/ for short 'Corporate Debtor' under Section 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by M/s. Amrutha Constructions Private Limited, for short 'Resolution Applicant' as duly approved by the Committee of Creditors with 100% voting share.
2. The Company Petition CP(IB) No. 384/7/HDB/2018 filed by Stressed Assets Stabilisation Fund u/s. 7 of IBC, 2016 was admitted by the Adjudicating Authority, vide Order dated 14.08.2019 and ordered commencement of CIRP against the Corporate Debtor/M/s. Galada Power and Telecommunication Limited by appointing Mr. Nitin Vishwanath Panchal as the Interim Resolution Professional (IRP). Later, in the 1st COC Meeting held on 20.09.2019, the IRP was confirmed as Resolution Professional, for short 'RP'.

3. On receipt of claims from the Creditors pursuant to public announcement dated 28.08.2019, the RP constituted the Committee of Creditors, for short 'COC' comprising of the following Financial Creditors of the Corporate Debtor as follows:

S.No.	Name of the Creditor	Voting %
1	Stressed Asset Stabilisation Fund	41.63%
2	Edelweiss ARC	10.90%
3	Syndicate Bank	28.63%
4	UTI Mutual Fund	18.84%

4. It is averred that the RP conducted a total of twenty five (25) meetings of the COC during the CIRP. The Applicant issued Form-G on 06.11.2019 and an extension notice was published on 22.11.2019, extending the last date of submission of EOI was 28.11.2019. In response, in the 1st round of EOI, Expression of Interests were received from five PRAs, out of which the following two Resolution Plans were received by the Resolution Professional.
- (i) Consortium of Jiva Internet Solutions Private Limited;
Vanisha Agarwal and Vanit Kumar
 - (ii) Radha Smelters Private Limited.

5. The said Resolution Plans were put up for voting in the 10th CoC meeting held on 16.04.2020 but COC rejected both the Resolution Plans. A copy of the minutes of the 10th CoC meeting and the e-voting results are filed as “Annexure E” and “Annexure F” of the application.
6. Subsequently, as the Resolution Applicants showed willingness to renegotiate and improve their offers, the CoC members in the 11th CoC meeting authorized the RP to move an application before this Tribunal for seeking permission / directions as to whether the re-negotiations / revised resolution plan can be considered by CoC with the same RAs whose Resolution plans already submitted by the existing RAs was rejected by the CoC. The said IA was dismissed by this Adjudicating Authority vide Order dated 27.10.2020.
7. In response to the fresh public announcement, the RP received EoI from 9 Prospective Resolution Applicants and issued a Final list of Prospective Resolution Applicants on 12.07.2021.
 - i. Bondada Engineering Private Limited
 - ii. Derit Infrastructure Private Limited
 - iii. Radha Smelters Private Limited
 - iv. ANA ARC Private Limited

- v. Consortium of Jiva Internet Solutions Private Limited, Vanisha Agarwal and Vanit Kumar
 - vi. Aaditya Yalamarty
 - vii. Rare Asset Reconstruction Limited
 - viii. Amrutha Constructions Private Limited
 - ix. KDA Ispat Private Limited
8. The Resolution Professional created a Virtual Data Room (VDR) and provided Information Memorandum, Evaluation Matrix, RFRP documents and other relevant documents and arranged for a plant visit for the prospective resolution applicants, post receipt of confidentiality undertaking/non-disclosure agreement by providing access to the VDR created for preparation of Resolution Plan.
9. The Applicant further states that out of nine prospective resolution applicants, the Applicant had received resolution plans from four PRAs which was apprised to the COC in its 21st meeting held on 05.08.2021. Out of the four, M/s Rare Asset Reconstruction Private Limited expressed its intention to withdraw from the fray of PRAs. Further the other three PRAs sought some more to submit the revised resolution plans as deliberated in the said meeting.

10. As deliberated in the 24th CoC meeting held on 31.08.2021, out of the three only the following two PRAs submitted their revised resolution plans and they were given a final opportunity to enhance their resolution plans in the adjourned 24th CoC meeting held on 02.09.2021.
- (i) Consortium of Jiva Internet Solutions Private Limited;
 - (ii) Vanisha Agarwal and Vanit Kumar & Radha Smelters Private Limited.
11. Upon submission of the final Resolution Plans, the same were placed before the COC for its consideration in the 25th CoC meeting held on 07.09.2021. The Members of the Committee of Creditors evaluated the said Resolution Plans strictly as per the evaluation matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the resolution plans were put for voting. The Resolution Plan submitted by **Amrutha Constructions Private Limited** was approved by members of CoC with 100% voting share in favour of it in the 25th CoC meeting held on 07.09.2021. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by Amrutha Constructions Private Limited. The Applicant further submits that all the requirements envisaged under

the Code and Rules/Regulations made there-under have been met.

12. The details of the approved Resolution Plan submitted by the Successful Resolution Applicant is as follows:

- (A) **AMRUTHA CONSTRUCTIONS PRIVATE LIMITED,** is a Company incorporated in the year 2006-2007 with a paid up share capital of Rs. 1,35,000/- led by the Promoter Mr. P. Venkateshwar Rao, who has experience in the Aluminium Conductor market and boasts itself to be financially strong robust company. The Company's net worth is Rs. 265.37 crores as on March 2021. The Resolution Plan envisages acquiring the Corporate Debtor (GPTL) as a going concern including all fixed assets of the Company.
- (B) The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

S.No.	Name of the Creditor	Voting %
1	Stressed Asset Stabilisation Fund	41.63%
2	Edelweiss ARC	10.90%
3	Syndicate Bank	28.63%
4	UTI Mutual Fund	18.84%

(C) The distribution of the Resolution Plan amount submitted by M/s. Amrutha Constructions Private Limited, are as follows:

(Amount in Rs. Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	215,502.12	210,727.96	2,932.00	1.39%
		Total[(a) + (b)]	215,502.12	210,727.96	2,932.00	1.39%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NA	NA
		(b) Other than (a) above:	NIL	NIL	NA	NA
		(i) who did not vote in favour of				

		the resolution Plan (ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	NIL	NIL	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	32.43	32.43	NIL	0.00%
		(b) Other than (a) above:				
		(i) Government	345.01	345.01	8.62	2.50%
		(ii) Workmen	18.50	18.26	17.83	97.65%
		(iii) Employees	71.40	71.16	31.19	43.83%
		(iv) Other OCs	201.22	124.30	3.11	2.50%
		Total[(a) + (b)]	668.55	591.16	60.75	10.28%
4	Other debts and dues	None	NA	NA	NA	NA
Grand Total			216,170.68	211,319.13	2992.75	1.42%

A copy of the Resolution Plan along with its annexures is filed as **Annexure - K** (page nos. 96-251) of the application.

(D) TERM OF THE RESOLUTION PLAN AND IMPLEMENTATION SCHEDULE:

The term of the resolution plan is 45 days of approval by the Adjudicating Authority.

Particulars	Time from vesting date (The vesting date is the date of approval of Resolution Plan by NCLT (Adjudicating Authority) under section 5(1) of Insolvency Bankruptcy Code 2016)
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CIRP costs	Upfront Rs. 3.50 crores payable within 45 days of approval of NCLT.
Financial Creditors	Upfront Rs. 29.32 crores payable within 45 days of approval of NCLT
Employees and Workmen	Upfront Rs. 0.49 crores payable within 45 days of approval of NCLT.
Operational Creditors & Statutory dues	Upfront Rs. 0.12 crores payable within 45 days of the approval of NCLT.
Total	Rs. 33.43 crores.

- *Further sought a 120 day cure period with an applicable interest rate of 12% p.a. compounded monthly, for any payment default from the due date for the payment proposed in the above Resolution Plan, prorated till the date of payment excluding any Force Majeure events.
- **In the event of default by the RA in making payments as envisaged under this Resolution Plan on account of any force majeure event, the RA would approach Implementation and Monitoring Committee (IMC) with a request to condone the delay at the discretion of the IMC.**
- The claims from workman/employees is considered as admitted by the Resolution Professional. However, the claims of related parties have not been considered while providing for payment to workman/employees. Further if any employee, workmen claim is less than Rs. 1,50,000/- individually would stand admitted, any individual claim above Rs. 1,50,000/- would be treated as Rs. 1,50,000/- basic plus 25% of the claim over and above Rs. 1,50,000/-. Any additional claims if any,

including claims regarding Provident Fund, Gratuity, Compensation, ESI, Bonus or any claims under Industrial Disputes Act etc, has been sought to be waived.

(E) Management of the Corporate Debtor

The implementation of the plan until the final payment of Resolution plan shall be supervised by the Monitoring Committee. The Monitoring Committee shall comprise of (i) a representative of the COC (ii) One representative of the resolution applicant (iii) Resolution Professional. On and from the Effective Date, the Reconstituted Board shall be responsible for daily affairs and operations of the Company/Cd.

(F) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form-H under Regulation 39 (4) as Annexure-O. It is submitted that Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value

and Liquidation value as submitted in Form-H is Rs. 33.83 crores and Rs. 21.54 crores respectively.

13. The Ld. Counsel submitted that on 23.09.2021, pursuant to issuance of 'Letter of Intent' (LoI) by the Resolution Professional to the SRA, 10% of the Resolution Plan amount i.e. Rs.3,85,00,000/- was remitted by way of cash and on 29.09.2021 the said amount was converted to a Term Deposit with a lien marked in favour of Stressed Assets Stabilisation Fund being the highest lender to the corporate debtor. A copy of the Letter of Intent dated 23.09.2021 issued and the evidence of receipt of performance security are annexed and marked as "Annexures L & M" respectively.
14. In the above backdrop, we heard Mr. VVSN Raju, Learned Counsel for RP. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-
 - (a) Provides for payment of Rs. 3.50 crores towards CIRP Cost or actual CIRP costs whichever is lower in priority over payments to all creditors. In case the CIRP cost exceeds Rs. 3.50 crores, the same will be restricted under the plan to Rs. 3.50 crores and any such additional CIRP cost would be adjusted from the

payments made under the plan to all stakeholders in proportion of their proposed payments within 45 days of the NCLT Approval Date.

- (b) The Plan provides for payment of Rs. 0.12 crores to operational creditors (other than workmen and employees). Further, the plan provides for payment of Rs. 0.49 crores to workman/employees under the Resolution Plan on priority in terms of Section 30 (2)(b).
- (c) There are no dissenting financial creditors as such the plan does not provide for payment to the dissenting Financial Creditors.

15. As seen from the records, this Tribunal on 14.03.2022 has observed that the valuations undertaken by both the valuers were incorrect and appointed Mr. N. Malikarjuna Setti and Mr. Madasa kumar as commissioners to independently get the valuation done.
16. Complying the above, the Commissioners appointed by this Tribunal undertook fresh valuation and placed the same before the CoC in the 26th COC meeting held on 18.07.2022, to seek instruction as to whether the COC members would still go with the approved resolution plan or with the latest valuation conducted by Tribunal appointed Commissioners.

The average liquidation value submitted by the Commissioners is Rs. 39.73 crores and the valuation already approved by the COC was Rs. 38.50 crores. However, the COC was of a unanimous view that they would like to proceed with the resolution plan already approved by them with 100% voting in 25th CoC meeting held on 07.09.2021. In this regard reliance can be placed on the ruling of Hon'ble Apex Court in the matter of Maharashtra Seamless Ltd Vs. Padmanabhan Venkatesh and Anr (2021) SCC OnLine SC 569 wherein it is held that *"the object behind a valuation is to assist the COC to take a well-considered decision on the resolution plan and once a resolution plan is approved by the COC, the statutory mandate of the Adjudicating Authority under Section 31 (1) of the IBC is to ascertain that the resolution plan meets the requirement of section 30 of the IBC and the Tribunal has to cede ground to commercial wisdom of the creditors than to assess the resolution plan on the basis of quantitative analysis vis-à-vis the liquidation value"*.

17. The Resolution Professional, the Applicant herein further filed an affidavit dated 31.12.2022 that he had received a claim from the Asst. Commissioner CGST & Central Excise, Division-X, Silvassa, Daman Commissionerate vide letter

dated 19.12.2022 for an amount of Rs. 1,21,64,474/- towards the dues of GST, but the same was rejected as it was received beyond the period of limitation and the fact was communicated to the claimant vide letter dated 22.12.2022. The liability has not been reflected in the books of accounts of the Company either by way of a liability or contingent liability. It is stated by the Applicant that the claim was considered on priority in view of the law laid down by Hon'ble Apex Court in the matter of State Tax Officer vs Rainbow Papers Limited. It is further stated by the Resolution Professional that upon seeking legal advice, the claim of the Department cannot be given priority over the dues of Secured Creditors and workmen. By placing reliance on the order of Hon'ble NCLA in the matter of Jet Aircraft Maintenance Engineers Welfare Association vs Ashish Chhawchharia, the Hon'ble NCLAT has held that the Department claim and its priority would depend under the legislation in which the claim is made. It is contended that even if the claim was to be considered, the same will be operation creditor without any priority and in view of large outstanding claim of secured creditor, the department will not receive any amount in the liquidation process. As such

there is no pay out contemplated to the claimant and the resolution plan continues to remain compliant.

18. This Tribunal on 29.03.2023 granted liberty to the Resolution Professional to bring on record the decision of the financial creditors and Resolution Applicant with regard to the manner in which pending proceedings in respect of avoidance, preferential or fraudulent transactions as per IA No. 89/2020 filed on 07.01.2022 will be pursued after the approval of the Resolution Plan and with respect to the distribution of such proceeds if any from such proceedings.
19. Accordingly, the Resolution Professional convened a meeting of the secured financial creditors on 31.03.2023 and the following was agreed upon by the Financial Creditors and the Resolution Applicant.
- (i) The Secured Financial Creditors will pursue PUFEE Applications.
 - (ii) Recovery, if any, arising upon the disposal of the Application will be shared amongst the secured financial creditors after adjusting the cost incurred for the same.
20. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court*** held that, "if the CoC had approved the Resolution Plan by

requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

21. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***
22. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that *“the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business*

decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

23. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out

piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

24. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
25. We therefore, hereby approve the revised Resolution Plan submitted by M/s Amrutha Constructions Private Limited, along with annexure, schedules forming part of the Resolution Plan annexed to the Application and order as under:
- i. The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due,

- guarantors and other stakeholders involved in the Resolution Plan.
- ii. The Resolution Applicant shall abide by the terms of the Resolution Plan mention in Clause XI (Terms of Resolution Plan)
 - iii. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
 - iv. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by the Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
 - v. It is hereby ordered that the Deposit amount furnished by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
 - vi. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all

necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- vii. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- viii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- ix. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
- x. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- xi. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xii. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.

Accordingly, IA 583/2021 in CP (IB) No.384/7/HBD/2018 stands disposed of.

SD/-

SATYA RANJAN PRASAD
MEMBER (TECHNICAL)

SD/-

DR. N.V.RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

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