

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.315/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016
&
I.A. No.394 of 2020
Under Section 30(6) of IBC, 2016

In the matter of:

Shri. Hari Babu Thota,
Resolution Professional of
V3 Engineers Private Limited
41/1, 2nd Floor, 11th Cross,
8th Main, 2nd Block,
Jayanagar,
Bengaluru - 560011

- Applicant/Resolution Professional

Date of order: 21st September, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Hari Babu Thota, RP

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 394 of 2020 in C.P. (IB) No.315/BB/2019 is filed by Shri Hari Babu Thota, Resolution Professional of V3 Engineers Private Limited (hereinafter referred to as 'Applicant') u/s 30(6) of I&B Code, 2016, by seeking approval of the Resolution plan submitted by Mr. Sanjay Punglia along with co-applicants viz., Mr. Abhishek Balar and Mr. Sudeep Dasani, which was approved by the Committee of Creditors at their meeting held on 21.08.2020; to approve all the proposals stated in



the resolution plan for revival of the corporate Debtor; to direct the statutory authorities for implementation of the Resolution plan for revival of the corporate debtor without any additional/further liability approved by the Hon'ble Tribunal etc.,.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

(1) C.P. (IB) No.315/BB/2019 is filed by M/s. Manjushree Travels ('Petitioner') U/s 9 of I&B Code, 2016, was admitted by the Adjudicating Authority, vide Order dated 02nd March 2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor i.e. M/s. V3 Engineers Private Limited, appointing the Applicant as IRP, imposing moratorium, etc.

(2) In Pursuant to Section 15 of I & B Code, R/w Regulation 6 of the CIRP Regulations, 2016, the IRP made Public Announcement on 8th March 2020 in Form A published in Financial Express (English) in Samyuktha Karnataka (Kannada) intimating to the Creditors regarding initiation of CIRP and to receive the claims within the prescribed time limit as prescribed under the provisions of the code. Further pursuant to Section 21 (1) of the code, the Applicant constituted Committee of Creditors (COC) consisting 2 (two) Operational Creditors asunder:

Sl. No.	Name of Operational Creditor	Address	Status	Amt in Rs.	Percentage
1.	Subramanya Hegde	No.80, 5A Main, 1 st C Cross, Remco layout, Vijayanagar, B'lore- 560040	Individual	11,20,000	27.62
2.	Manjushree	No.70, 1 st	Sole	29,35,511	72.38

Ujwala

	Travels	Main. Cross, Maruthinagar, Nandini Layout, Bengaluru 560 096	1 st Jai --	Proprietorship concern		
		Total			40,55,511	100

The report certifying the constitution of COC was submitted to the Deputy Registrar of the Adjudicating Authority on 20.03.2020 under Regulation 17 of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

- (3) At the first COC meeting held on 01.04.2020 at 4.00 p.m, through Video Conference, the COC appointed the IRP as RP of the Corporate Debtor for monthly remuneration of Rs. 1,00,000/- excluding GST and the same was approved by the Adjudicating Authority on 29th July 2020 passed in I.A No. 230 of 2020.
- (4) The Second COC meeting was held on 20th May 2020 through video conferencing and at the meeting the members considered the following agendas:
- i. Noting of invitation for Expression of Interest in Form G
 - ii. Approval of criteria for Resolution Applicants
 - iii. Approval of evaluation matrix
 - iv. Fixation of performance security to be submitted by the Resolution Applicant in accordance with Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016.
- (5) As per Regulation 27 of the IBBI, Regulation 2016, the RP appointed 4 (four) registered valuers viz., Mr. Motappa Thimmarayaswamy for Plant and Machinery, Mr. Pulianda Chengappa Achaya for Plant and Machinery, Mr. Madhugiri



Venkatarayappa Sudarshan for Securities or Financial Assets and Ms. Kusumadevi.R.H for Securities or Financial Assets to determine the fair market value and liquidation value of the Corporate Debtor. Further, as per Section 29 of the Code r/w Regulation 36 of IBBI (CIRP) Regulation 2016, the Applicant prepared Information Memorandum and the same was made available to the COC on 13th April 2020.

- (6) A publication seeking expression of Interest (EOI) in Form G was issued on 22nd May 2020 published in Financial Express (English newspaper) and in Samyuktha Karnataka (Kannada newspaper) stating the last date for submission of Expression of Interest was 6th July 2020 and also in the website of IBBI. Accordingly, Expression of Interest (EOI) was received from two Applicants viz., Mr. Sanjay Punglia on 2nd July 2020 and M/s. V3 Interiors Private Limited on 5th July 2020. The provisional list of two prospective resolution applicants was issued on 8th July 2020. Further 5 (five) days time was provided to raise any objections, however no objections was received by the Applicant, therefore the final list of two prospective resolution applicants viz., Mr. Sanjay Punglia and M/s. V3 Interiors Pvt. Limited., was issued on 15th July 2020. Subsequently, V3 Interiors Private Limited withdrawn the Expression of Interest and Mr. Sanjay Punglia along with co-applicants submitted the resolution plan for revival of the Corporate Debtor.
- (7) At the 3rd meeting of COC held on 21st August 2020 through Video Conferencing, the COC members perused the resolution plan and members constituting 100% of voting share approved the resolution plan submitted by Mr. Sanjay Punglia along with



co-applicants viz., Mr. Abhishek Balar and Shri Sudeep Dasani for revival of the corporate Debtor.

- (8) It is stated that there was a significant difference between the valuation amount provided by Shri Pulianda Chengappa Achaya and Shri Motappa Thimmarayaswamy on Plant and Machinery, therefore, the RP appointed Shri Sudhindra Rao H.R, Registered Valuer-Plant and Machinery, Regn. No: IBBI/RV/02/2020/13140, No. 1662, East End A Main, 38th Cross, Jayanagar 9th Block, Bengaluru-69 as a third Registered Valuer in accordance with Regulation 35 (1) (b) of the IBBI (CIRP) Regulation, 2016. Further, as per regulation, the average of the two closest estimates of the value shall be considered to arrive the fair value (FV) or the liquidation value (LV). Accordingly the fair value and liquidation value of the Corporate Debtor as under:

Sl. No.	Name of the Registered Valuer	Value arrived at		Average	
		Fair Value (in INR)	Liquidation Value (in INR)	Fair Value (in INR)	Liquidation value (in INR)
1.	Mr. Pulianda Chengappa Achaya (P & M)	7,90,000	4,43,000	14,23,265	8,35,163
2.	Mr. Motappa Thimmarayaswamy - P & M	20,56,529	12,27,326		
3.	Mrs. Kusumadevi R. H- SFA	69,00,651	6,20,794	74,08,825	5,90,397
4.	Mr. Madhugiri Venkatarayappa Sudarshan - SFA	79,17,000	5,60,000		
				88,32,090	14,25,560
5	Mr. Sudhindra Rao HR - 3 rd Valuer - P & M	33,88,000	25,30,000	This Plant and Machinery value was not considered as it was not being among two closet values	

1.	Fair Value	88,32,090
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2.	Liquidation value	14,25,560
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(9) The brief of the resolution plan approved by the COC is as under:

- (1) *Mr. Sudeep Sampatmal Dasani (Applicant No.1) is a fellow member of the Institute of CA of India (ICAI) having more than 20 years of diverse professional experience. Mr. Sanjay Badrilal Punglia, (Applicant No.2) is a qualified CA having more than 14 years of experience in advising and consulting across different Manufacturing verticals both at corporate and operation level and Mr. Abhishek Achalchand Balar (Applicant No.3) is a Director in Pragya Textile Pvt. Limited and Jagprem Chemical Private Limited in Kuber shree Industries having over 21 years of experience in textile industry and is running business well know textile unit in Pali (Rajasthan).*
- (2) *Statutory Dues: Regarding the claim of PF Department of Rs. 5,44,236/-, the Resolution Applicants are providing an amount of Rs. 1,50,000/- towards full and final settlement of all statutory dues. The same shall be distributed amongst the various statutory dues, in the ratio of their claim admitted by the RP if any.*
- (3) *Operational Creditors: With regard to claim of the Operational Creditors the Resolution Applicants are providing an upfront payment of Rs. 0.50 lakh. Apart from upfront payment Resolution Applicants are providing contingent payment.*

Name of the Operational Creditor	Claim admitted (rs)	Percentage of total claim (Operational Creditors other than statutory dues (%)	Amount offered (Rs.)
Manjushree Travels	29,35,511.00	54.94%	27,471.64
Subramanya Hegde	11,20,000.00	20.96%	10,481.39
Fabchair	12,87,292.00	24.09%	12,046.97
Total	53,42,803.00	100.00	50,000.00

- (4) *Infusion of funds by the Resolution Applicants: The Resolution Applicants proposes preferential issue and allotment of 45 lakhs*

[Signature]

(forty five lac shares only) equity share of Rs. 1 each to themselves along with PAC. The Resolution Applicants in addition to the above shares, propose to issue and allotment of 5,00,000 shares (five lakh share only) of Rs. 1 each, having differential voting rights (DVR) of 50 (fifty only) vote per share to themselves along with PAC.

(5) Schedule of payment to various stakeholders:

Particulars	Claims admitted (rs. Lacs)	Proposed payment amount (Rs. Lacs)	Upfront payment (Rs. Lacs)	Defer red paym ent (Rs. In lac)	Proposed payment structure
CIRP cost	13.64	14	14	Nil	Upfront i.e within 30 days of the approval of resolution plan by Adjudicating Authority & in priority to other shareholders
Financial Creditors	74.33	0.25	0.25	-	Upfront i.e. within 90 days of the approval of the resolution plan by the Adjudicating Authority
Operational Creditors (other than statutory dues)	88.03	0.50	0.50	-	Upfront i.e. within 90 days of the approval of the resolution plan by the Adjudicating Authority
Operational Creditors (statutory dues)	5.44	1.50	1.50	NIL	Upfront i.e, within 90 days of the approval of the resolution plan by the Adjudicating Authority
Workmen and employees due	20.41	0.25	0.25	-	Within 90 days of the approval of the resolution plan by the Adjudicating authority.
Equity Shareholders	NA	0.96	0.96		All Existing Equity shares shall be transferred to Resolution Applicants and PAC at Rs. 0.01/ share as mentioned in the resolution plan within 90 days of the approval of

					resolution plan
Total	167.25	17.46	17.46	-	-

(6) *Cost of scheme and source of funds:*

- i. CIRP Cost : 14 lakhs
- ii. Financial Creditors :0.25 lakhs
- iii. Employees and Workmen dues :0.25 lakhs
- iv. Operational Creditors (other than statutory dues) – 0.50lakhs
- v. Operational Creditors (statutory dues) - 1.50 lakhs
- vi. Payment to shareholders – 0.96 lakhs
- vii. For working capital of business – 33,50 lakhs

Total cost of scheme – 50. 96 lakhs

(7) *Exemptions/Reliefs sought: any action with regard to the assets/claims/rights etc as mentioned in the balance sheet as well as off balance sheet items of the Corporate Debtor as on the effective date shall be assets/claims/rights of the Corporate Debtor and shall be dealt with by the Resolution Applicants at its sole discretion.*(8) *Amendment in the Capital Clause of the Memorandum of Association of the Corporate Debtor: The Capital Clause of the Corporate Debtor in Authorized Share Capital of the Corporate Debtor shall be amended pursuant to Section 61 read with Section 66 and other Applicable provisions, if any of the Companies Act, 2013, so as to issue shares as per Resolution Plan as mentioned below:*

- i. *The existing authorized share capital of the Corporate Debtor comprising of 1,00,00,000/- Equity Shares of Rs.10/- each shall be subdivided into 10,00,00,000 Equity shares of Re.1/- each.*
- ii. *Extinguishment of all dues including taxes, duty, penalties, interest, fined, cess, charges, unpaid TDS/TCS (to the extend applicable), whether admitted or not, due or*



- contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or unasserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicants and PAC over the Corporate Debtor pursuant to this Resolution Plan, except for which payment is specifically provided under this plan.*
- iii.** *On approval of the plan by the Adjudicating Authority the Corporate Debtor, Resolution Applicants including PAC shall be deemed to be exempt from payment of any charges, duty, levy for transfer of ownership of the Corporate Debtor in pursuant to the resolution plan approved by the Adjudicating Authority.*
- iv.** *On approval of the Plan by the Adjudicating Authority, it shall be deemed that the Corporate Debtor and Resolution Applicants along with PAC shall not be liable for any liabilities other than those specifically provided in the resolution plan.*
- v.** *Resolution Applicants and Corporate Debtor shall not be considered with reference to any investigation related prior to the period of effective date. Resolution Applicants and Corporate debtor shall be granted immunity from any actions and penalties under any laws for such period.*
- vi.** *No further approval of NCLT or any other Authority will be required to give effect to the Reconstitution of Share Capital under the Companies Act and there shall be no requirement to add "and reduced" in the name of the*



Corporate Debtor as the approval of the Resolution Plan by Adjudicating Authority shall be deemed to be an order under Section 66 of the Companies Act along with other applicable provisions of the Companies Act, sanctioning and approving all matters hereto.

vii. *The Reconstitution of Share Capital shall be approved and implemented pursuant to the provisions of the IBC, specifically, Regulation 37 of the CIRP Regulations read with section 31 of the IBC. The Compliance with the provisions of the resolution plan and the Reconstitution of Share Capital shall be deemed to be in accordance with and constitute compliance with any and all provisions of Applicable Laws that would have otherwise applied to a similar reduction of capital under the Companies Act, the Income Tax Act 1961 and/or under rules/ circulars/ regulations issued thereunder.*

viii. *Any amount paid by Corporate Debtor or appropriated by financial or operational creditor after commencement of CIRP shall stand adjusted in the total amount payable to the financial or operational creditors as the case may be and they shall be entitled for net balance amount only.*

(9) *The approval of the Resolution plan by the Adjudicating Authority shall have the effect of providing the Corporate Debtor and Resolution Applicants immunity in case of any proceedings/suits/claims going on, on the Corporate Debtor as well as any proceeding/suits/claims which may arrive after taking over corporate debtor but which pertains to the period prior of taking over, as Resolution Applicants is completely unaware of past business transaction of the*



corporate Debtor and would not be in a position to face the same. The same is required for the revival of the corporate Debtor and so that, subsequent board member would focus more on making corporate debtor profitable and grow the corporate Debtor by capturing available opportunities in the industry in right time as compared to sparing time on long pending litigations on the Corporate Debtor for which Resolution Applicants would be completely unaware.

- (10) Upon approval of the plan by the Adjudicating Authority, the RP shall get the accounts and financial statements prepared upto the effective date and submit the same to the Resolution applicants. The Accounts and financial statements prepared shall be such that it truly reflects the fair value of the assets and liabilities of the Corporate Debtor. It is clarified that the approval of the Adjudicating Authority pursuant to Section 31 of the IBC shall constitute adequate approval for the reduction of the paid up share capital of the Corporate Debtor and for adjustment of losses in the books of the Corporate Debtor.
- (11) *Business Plan:* Resolution Applicants propose to continue the business of the Corporate Debtor and stated that they will try to discontinue low margin products and would emphasize more on high margin products as well as new products. A periodic review of the same will be made by ten management team.
- (12) *Breakup CIRP cost*

Particulars	Amount (in INR)
IRP Fees	1,50,000.00
Add: GST at 18% on IRP fees	27,000.00
Newspaper Publications -	22,680

Form A	
RP Fees	5,00,000.00
Add: GST at 18% on RP fees	90,000
Newspaper publication - Form G	27,216
Filing fees of application	1,000
Printing, stationary, postage and misc.	10,000
Registered valuers' fees	2,00,000
Add: GST at 18% of registered valuers fees	36,000
Fees of Mr. Varun	1,00,000
Add: GST at 18%	18,000
Consultation fees of Accountant	1,60,000
Rent	36,000
Expected Expenses	10,000
	13,87,896

3. Heard Shri Hari Babu Thota, Learned Counsel for the Applicant/RP through Video Conference. We have carefully perused the pleadings of Party and extant provisions of the Code and the Rules made thereunder and the Law on the issue.
4. Shri Hari Babu Thota, the Applicant, while reiterating various averments made in the Application/Petition, has further submitted that the Resolution Plan has been approved by the CoC with requisite majority, and it satisfy all requisite conditions as per the provisions of the Code. Therefore, he urged the Adjudicating Authority to approve the Resolution Plan as prayed for.

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5. In order to approve a Resolution Plan U/s 31(1) of the Code, Resolution Professional should examine each Resolution Plan as prescribed under Section 30(2) of the Code, as mentioned below:

- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*
- b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53;*
- c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;*
- d) the implementation and supervision of the resolution plan;*
- e) does not contravene any of the provisions of the law for the time being in force;*
- f) confirms to such other requirements as may be specified by the Board.*

6. In compliance with the said conditions, the Resolution Professional has submitted various documents and statements as per provisions of the Code and the Rules made there under. And these compliances are briefly pointed out as under:

(1) The Resolution Professional examined the resolution plan received from the Resolution Applicant Mr. Sanjay Punglia along with co-applicants viz., Mr. Abhishek Balar and Mr. Sudeep Dasani and approved by the COC of V3 Engineers Private limited.

(2) The RP certify that :



- (i) The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) The Resolution Applicants Mr. Sanjay Punglia along with co-applicants namely, Mr. Abhishek Balar and Mr. Sudeep Dasani has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan. The contents of he said affidavit are in order.
- (iii) The said Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of COC (Operational Creditors) after considering its feasibility and viability and other requirements specifies by the CIRP Regulations.
- (iv) The voting was held in the meeting of the COC on 21st August 2020 where all the members of the COC were present.
- (3) The list of Operational Creditors of the CD VS Engineers Private Limited being members of the COC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted Dissented/Abstained) for
1	Manjushree Travels	72.38	For
2	SubramanyaHegde	27.62	For
Total		100	



(4) The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and Regulations made thereunder.

(5) The amounts provided for the stakeholders under the Resolution Plan is as under: (Amount in Rs. Lakh)

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	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) Who did not vote in favour of the Resolution Plan				
		(ii) Who voted in favour of the resolution plan				
		Total [(a) + (b)]	-	-	-	-
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	74.33	74.33	0.25	
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the Resolution Plan				
		(ii) Who voted in favour of the resolution Plan				
		Total [(a) + (b)]				
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:				
		(i) Government	5.44	1.79	1.50	
		(ii) Workmen	-	-	-	
		(iii) Employees	20.41	20.41	0.25	
		(iv) Other Operational Creditors	53.43	53.43	0.50	
		Total [(a) + (b)]				
4	Other Debts and dues					
Grand Total						

*If there are sub-categories in a category, please add rows for each sub-category.

Note: Resolution Applicants proposed a contingent payment to the operational creditors (other than statutory dues) and related party financial creditors for payment of 50% of the receivables than shall be recovered by the resolution applicants within a period of 1 year from the date of approval of resolution plan.

(6) The interests of existing shareholders have been altered by the resolution Plan as under:

Sl No.	Category of Shareholder	No of shares held before CIRP	No. of Shares held after the CIRP	Voting share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	96,48,633	0	100	0
2	Preference		0		0
3	-	-	-	-	-

7. The above facts and circumstances clearly establish that the Resolution Plan, which was approved by the Committee of Creditors on 21.08.2020 for Mr. Sanjay Punglia Resolution Applicant along with co-applicants viz., Mr. Abhishek Balar and Mr. Sudeep Dasani, confirm all the requisite conditions and reasonably satisfy all the stake holders of Corporate Debtor and it was approved with requisite majority. Therefore, we are satisfied that the said Resolution Plan is a fit to be approved, under Section 31(1) of the IBC, 2016.
8. In the result, by exercising the powers conferred on this Adjudicating Authority, under Section 31(1) IBC, 2016 and the extant provisions of Rules made thereunder, both **C.P.(IB)No.315/BB/2019 & I.A.No.394 of 2020** are disposed of with the following directions:



- (1) The Resolution Plan in question as submitted by Mr. Sanjay Punglia (Resolution Applicant) along with co-applicants viz., Mr. Abhishek Balar and Mr. Sudeep Dasani as approved by the Committee of Creditors at their 3rd meeting held on 21st August 2020 is hereby approved by declaring that the Resolution Plan will be binding on the Corporate Debtor (Applicant) and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, as authorities to whom statutory dues are owed, guarantors, and other stakeholders involved in the resolution plan.
- (2) The moratorium imposed vide Order dated 02.03.2020 passed in the CP shall cease to have effect from the date of communication of the order.
- (3) The Resolution Professional is directed to handover the management control of all the assets, documents/records in physical and/or digital form on an as is where is basis to the Resolution Applicant immediately, and the Resolution Professional will be ceased to be Resolution Professional.
- (4) The Resolution Professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.
- (5) The Resolution Applicant shall pursuant to the Resolution Plan approved under sub-section (1) obtain the necessary approval required under any law for the time being in force within a period of the one year from the date of approval of the Resolution Plan by the Adjudicating Authority under sub-



section (1) or within such period as provided for in such law, which is later:

(6) The Resolution Applicant is at liberty to file miscellaneous Application seeking for clarification(s), if any requires, in the implementation of the terms and conditions to the Resolution Plan.

(7) No order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**


**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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