

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court Room-2**

C.P. (I.B) No.424/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.02.2020**

Name of the Company: Nuvoco Vistas Corporation Ltd.
V/s.
Archon Powerinfra India Pvt. Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None appeared on behalf of the parties.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**



**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 10th day of February, 2020

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 424/9/NCLT/AHM/2018

In the matter of:

Nuvoco Vistas Corporation Limited
(Formerly known as Lafarge India Limited)
Equinox Business Park
Tower-3, East Wing, 4th Floor
Off. Bandra Kurla Complex
LBS Marg, Kurla (West)
MUMBAI 400 070

Petitioner
Financial Creditor

Versus

M/s. Archon Powerinfra India Private Limited
(Formerly known as SKP Buildcon Private Limited)
Shop No. 3, Vinayak Complex,
Vinayak Bungalows
Near Sola Railway Crossing
Sola Road
Ghatlodiya
Ahmedabad 380 061
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 10th February, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

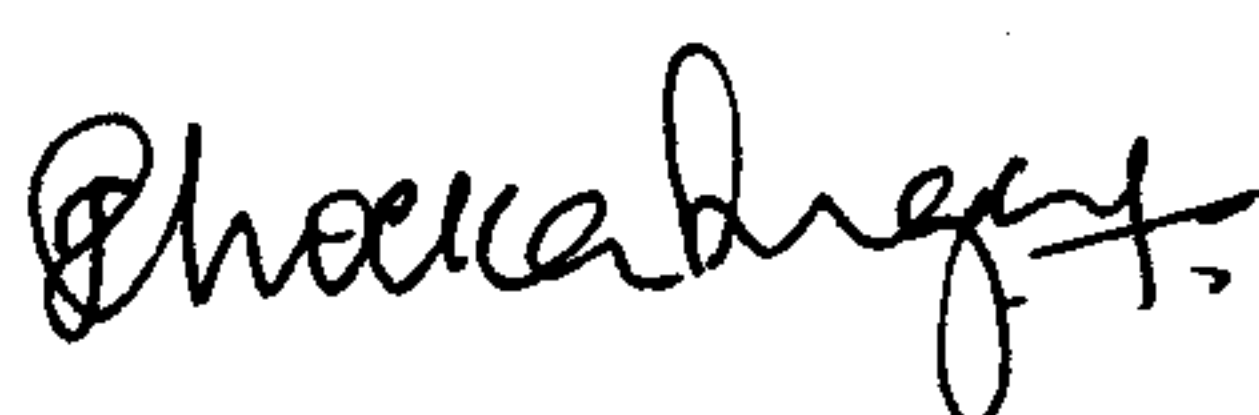
Appearance:

Advocate Mr. Vibhor Chaplot for petitioner.
Advocate Mr. Vijay B. Limbachiya for respondent

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Hardik Hasmukhbhai Thakore, Assistant Manager (Accounts & Administration), authorised signatory of operational creditor M/s. **Nuvoco Vistas Corporation Limited** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy




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(Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

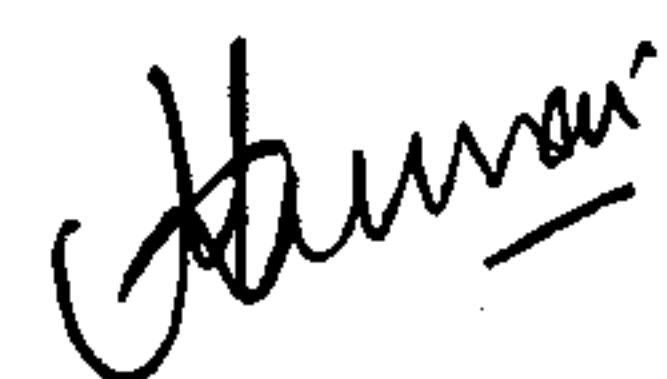
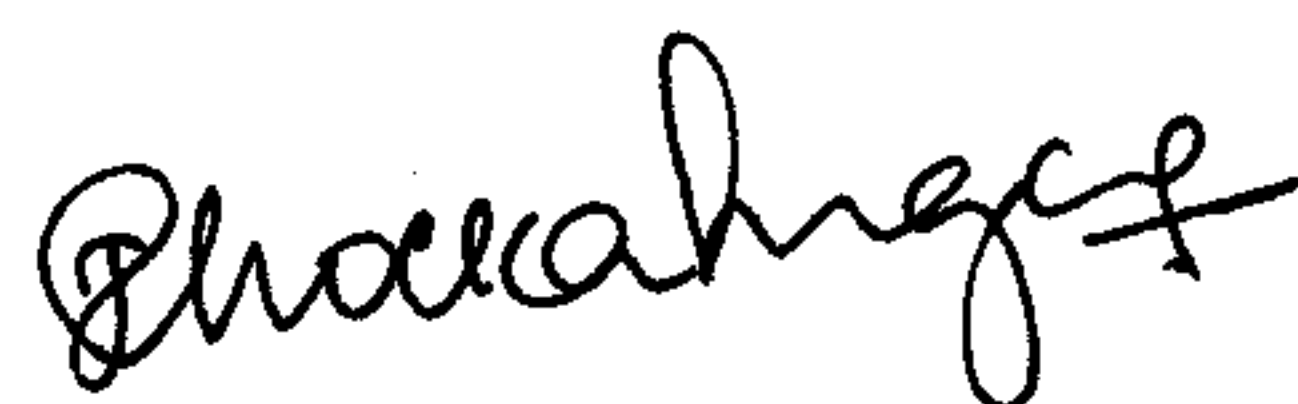
2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 28.08.2010 having identification No. U45200GJ2010PTC062145 and having registered office at Ghatlodia, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 65,00,000/- and paid up share capital is Rs. 25,00,000/-.
3. The applicant/operational creditor is a company incorporated under the Companies Act, 1956 having its registered office at Mumbai is engaged in the business of manufacture and/or sale of cement, ready mix concrete (RMX) and quarrying, processing, selling of hard rock/sand and gravel aggregate products.
4. The applicant/operational creditor has stated that the corporate debtor had approached the applicant for purchase of Ready Mix Concrete (hereinafter referred to as RMC) to be used at the project sites of the respondent at IOCL Plant, Gidha Bhojpur, Bihar and IOCL Plant, RND Centre, Sector-13, Faridabad. That, after due negotiations, the respondent placed purchase orders dated 09.01.2016, 11.02.2016 and 08.04.2016 for supply of RMC M-10, 20 and 25. That, the

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purchase orders dated 09.01.2016 and 11.02.2016 specifically provided a condition of payment i.e. 100% payment to be made along with the purchase order and the purchase order dated 08.04.2016 stipulated payment within 14 days from the date of submission of bill.

5. The applicant has further stated that pursuant to above mentioned purchase orders dated 09.01.2016, 11.02.2016 and 08.04.2016, the applicant supplied RMC in various batches from January, 2016 to October, 2016 as per their agreement with the respondent and raised delivery challans in respect of delivery of materials. That, these delivery challans had been duly signed and acknowledged by the respondent which reveals that the materials were being received by the respondent at their site. That, the respondent accepted and acknowledged receipt of RMC without any protest as the RMC supplied was in consonance with the quality and the specifications demanded by the respondent company. That, the applicant also raised retail invoices on supplies made from time to time, which were duly accepted by the respondent. That, the respondent never objected with regard to the cost and quality of the material and over and above drawn the profit/benefit of using the material supplied by the applicant and failed to pay the outstanding dues of the applicant.



6. The applicant has further stated that since the respondent had a running account with the applicant whereby they were allowed to pay on a lump sum basis instead of paying on tax invoices raised by the applicant from time to time, the respondent issued two cheques dated 20.05.2017 and 30.05.2017 totally amounting to Rs. 4,09,804/-. That, on presentation, both the cheques were dishonoured with remarks "payment stopped by drawer". That, in lieu of such dishonour of cheque, the applicant issued a legal notice dated 20.06.2017 to the respondent under section 138 read with Section 141 of the Negotiable Instruments Act, 1881 calling upon the respondent to pay the entire due amount within 15 days from the receipt of the notice. That, the applicant has failed to pay total amount of Rs. 12,57,916/- along with interest of Rs. 6,13,863/- (24% per annum calculated till 21.05.2018) totalling to **Rs. 18,71,779/- (Rupees eighteen lacs seventy-one thousand seven hundred seventy-nine only)**.
7. It is further stated by the applicant that having failed to receive any reply from the respondent, the applicant issued a demand notice on 23.09.2017 under section 8 of the I & B Code calling upon the respondent to pay the operational debt failing which the applicant shall initiated CIRP proceedings. That, the demand notice issued by the applicant returned undelivered on 03.10.2017 with remark "**left**". That, having come to know that the respondent has changed its address, the respondent issued another demand


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notice at the registered office address of the respondent on 27.03.2018 which also returned undelivered on 06.04.2018 with the remark "left".

8. The applicant has further stated that by reason of the fact that the respondent has neither satisfied the claim of the applicant nor compounded or secured the same to the satisfaction of the applicant within the statutory period of ten days from the date of demand notice, the respondent is deemed to be unable to pay its debts and, therefore, the liquidation procedure may be initiated against the respondent.
9. In support of its claim, the operational creditor has annexed to the application copy of all related documents like copy of invoices, demand notice, e-mail communication, proof of service etc.
10. The respondent filed affidavit in reply inter alia denying all the contents and averments in the petition. That, the petition is incomplete and affidavit as per section 9 (3) not submitted along with form 5, the person who has signed the application is not authorised by the Board resolution, the demand notice would have been delivered at the alternative address of the respondent, demand notice is not signed by authorised person, quality of the material supplied by the petitioner were not upto the mark as per standard guidelines

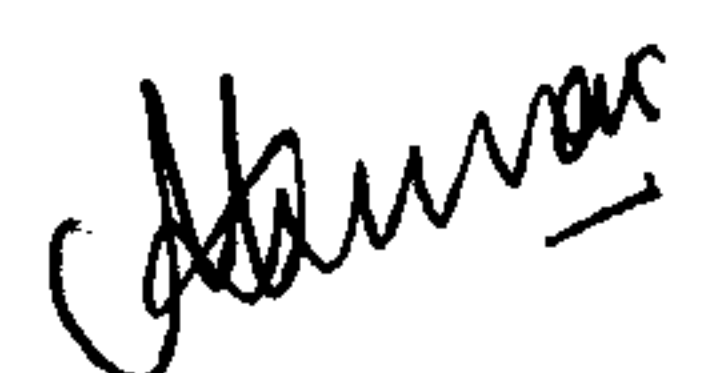
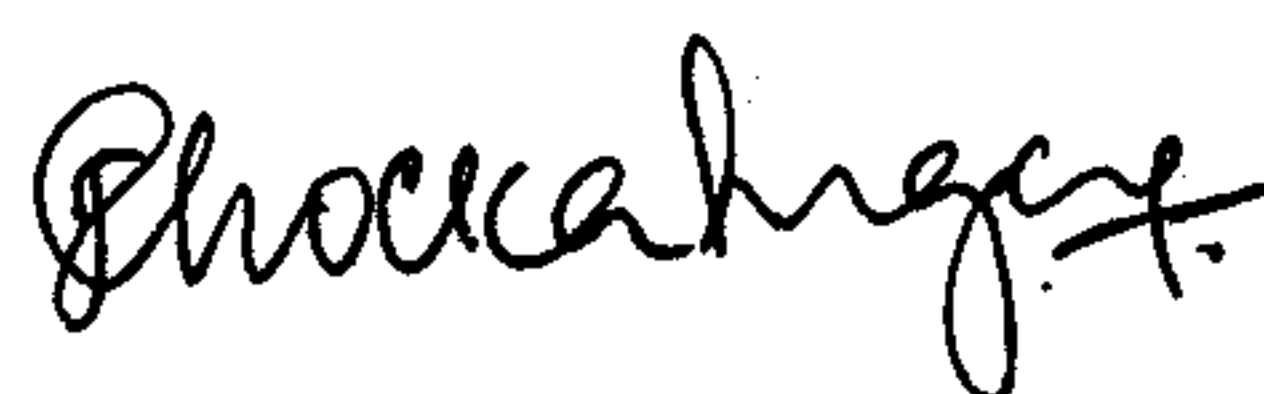
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of Indian Oil Corporation as a result of which payment has been held up and the amount claimed by the petitioner does not exist and disputed.

Findings

11. Heard the counsels appearing behalf of both the sides and perused the documents annexed to the application and reply thereto.

12. On perusal of the records it is found that the petition is supported by affidavit as per section 9 (3) of the I & B Code (**page 18**). The instant petition is signed by Mr. Hardik Hasmukhlal Thakore on the basis of Letter of Authority dated 28th August, 2017 issued by Mr. Arun Shukla, Chief of RMX & Aggregate Division of the petitioner company in pursuance of a resolution of the Board of Directors of the company dated 8th August, 2017 whereby Mr. Arun Shukla has been delegated authority to represent the company in the proceedings before any Forum, Tribunal, Labour Court, Civil Court etc., whereas, the demand notice dated 27th March , 2018 is issued by Mr. Kamlesh Asher, AGM (Legal) on the basis of authority given to him by Mr. Frederic Guimbal, Product Line General Manager, RMX – Nuvoco Vistas Corporation Limited pursuant to Board Resolution passed on 31st January, 2017.



13. As regards the contention raised by the respondent that the material supplied by the petitioner were of inferior quality, it is found that the respondent has failed to produce any record in support of such issue. The copy of e-mail communication annexed to the affidavit in reply at page No. **9-12** are the communication between the respondent and Indian Oil Corporation. The respondent has not placed on record copy of any communication between the respondent and the petitioner regarding quality of the material supplied by the petitioner to Indian Oil Corporation and therefore contention raised by the respondent regarding pre-existing dispute does not hold good.
14. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt to the Applicant.
15. In the instant case, the documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
16. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.

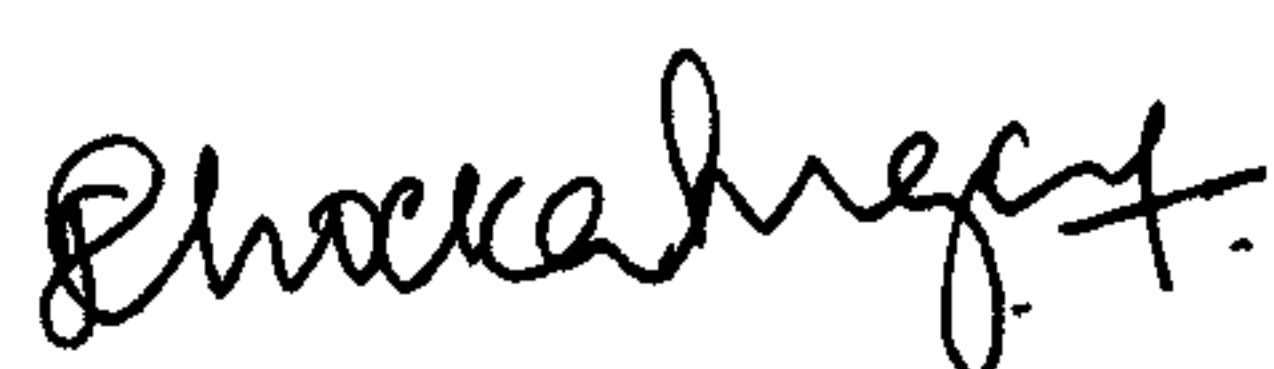
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17. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
18. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
 - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

19. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has been raised by the




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respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

20. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
21. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency



Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

22. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of subsection (1) of Section 14 of the Code: -

- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

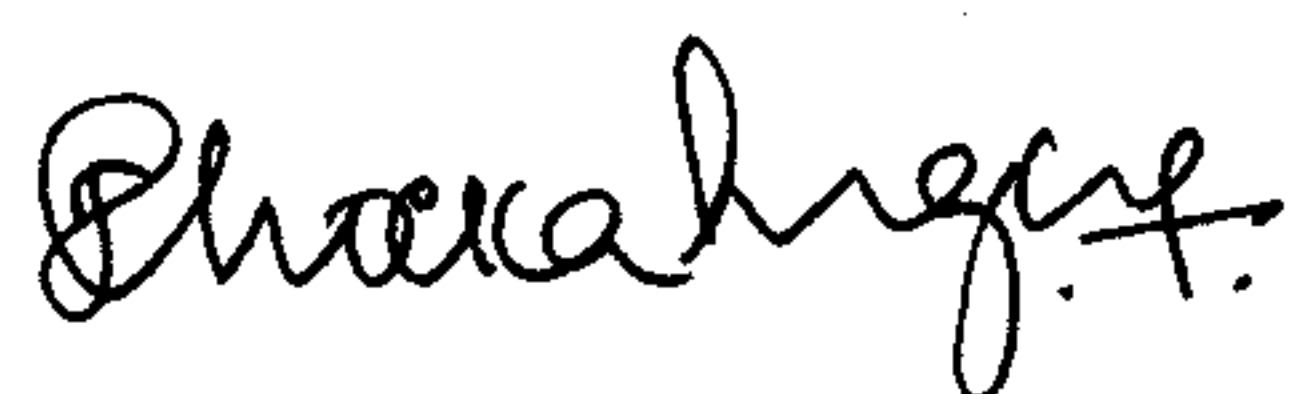
23. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be

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terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.


24. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
25. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road, Navrangpura, Ahmedabad 380 009 (mbhagat2003@gmail.com) having registration No. IBBI/IPA-001/IP-P00856/2017-2018/11438 to act as an interim resolution professional under Section 13(1)(c) of the Code.
26. This Petition is accordingly admitted.





27. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
28. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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