

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA
&

HON'BLE SHRI JUSTICE PRADEEP MITTAL
ARBITRATION APPEAL No. 15 of 2024

*MADHYA PRADESH POWER TRANSMISSION COMPANY
LIMITED*

Versus

V.K. UDYOG

Appearance:

Shri Sheersh Agrawal – Advocate for appellant.

Shri K. T. Thakre - Senior Advocate with Vaishali Dubey –
Advocate for respondent.

WITH

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Order

Per: Justice Pradeep Mittal

Heard on 16.03.2026

Order pronounced on 08.04.2026

The issue involved in these arbitration case are similar in nature, thus they are being decided by this common order.

The present Commercial Appeal has been filed by the Appellant, Madhya Pradesh Power Transmission Company Limited (hereinafter referred to as 'MPPTCL' or 'the Appellant'), under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'), challenging the order dated 03.01.2024 passed by the learned 24th District Judge (Commercial Court), Jabalpur, whereby the application filed by the Appellant under Section 34 of the Act, 1996 has been dismissed and the arbitral award dated 16.11.2018 passed by the learned Sole Arbitrator, Justice (Retd.) Shri S.C. Pandey has been affirmed.

BRIEF FACTS

2. The Appellant had placed two purchase orders dated 29.09.2007 upon the Respondent for supply of disc insulators (70 KN and 90 KN) under the Asian Development Bank (ADB) funded M.P. Power Sector Investment Programme. The total contract value was USD 4,042,992 (approximately Rs.16.20 crores). As per the tender conditions and ADB guidelines, the Respondent furnished manufacturer authorisation of a Chinese entity, namely Jiangxi Gaoqiang Ceramic Insulators Group Co. Ltd., and undertook complete responsibility for performance of the contract.

3. The delivery schedule required completion of supplies by 28.04.2009. The first lot of insulators was offered for inspection in

December 2007, and third-party inspection was conducted by ERDA, Vadodara, in China during 24–26 January 2008, wherein the samples initially met the required standards. However, upon receipt at the Appellant's stores at Indore and Jabalpur, large-scale breakages and defects were noticed. On further inspection, the insulators were found to be non-homogeneous and improperly cemented, raising serious safety concerns for extra high voltage (EHV) transmission lines.

4. Samples sent to ERDA laboratory at Vadodara failed the prescribed tests. Even upon re-testing before the Respondent's representatives during 19–22 April 2008, the results remained unsatisfactory. The Appellant accordingly rejected the entire first lot vide order dated 28.04.2008, which was accepted by the Respondent. Thereafter, based on an undertaking dated 30.05.2008 given by the Respondent assuring improved quality, a second lot was permitted for inspection in China in July 2008. However, it was subsequently discovered that a substantial portion of the supplied material had been manufactured prior to the undertaking, thereby vitiating the quality assurance. Consequently, only insulators manufactured after 30.05.2008 were accepted; the balance was rejected. Due to urgent operational requirements, the Appellant procured the balance quantity through a fresh tender. An additional expenditure of Rs. 2,06,35,698/- was incurred, partly recovered through encashment of bank guarantee, leaving a balance of Rs. 36,46,000/- unpaid by the Respondent.

5. The Respondent, instead of discharging its liability, initiated arbitration proceedings. The learned Sole Arbitrator, vide award

dated 16.11.2018, allowed the claims of the Respondent. The Appellant's application under Section 34 of the Act, 1996 before the Commercial Court, Jabalpur, came to be dismissed vide the impugned order dated 03.01.2024. Hence this appeal.

SUBMISSIONS OF LEARNED COUNSEL

6. Learned counsel for the Appellant submits that the contract in question constitutes a 'works contract' as defined under the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter 'the Adhiniyam, 1983'), as amended, and therefore all disputes arising thereunder could only be adjudicated by the Madhyastham Tribunal constituted under the said Adhiniyam. Reliance is placed on the Full Bench judgment of this Court in Viva Highways Ltd. v. M.P. Road Development Corporation Ltd., and the judgment of the Hon'ble Supreme Court in Lion Engineering Consultants v. State of Madhya Pradesh, to urge that the issue of jurisdiction can be raised even at the stage of Section 34/37 proceedings and is not amenable to waiver.

7. It is further contended that by the amendment of 24.04.1990, the definition of 'works contract' was expanded to include agreements for supply of goods or material connected with execution of works relating to powerhouses, transformers and allied infrastructure. The present contract, being for procurement of disc insulators specifically for use in 400 KV, 220 KV and 132 KV EHV transmission systems under an ADB-funded project, is intrinsically linked to the execution of power transmission infrastructure works, thereby squarely falling within the definition.

8. Learned counsel for the Respondent submits that the contract was purely a supply contract for disc insulators, with no obligation upon the Respondent to execute any works. The scope of the contract, as reflected in Clause 4, was limited to supply, testing, delivery and related local handling and transportation. The contract cannot be characterised as a 'works contract' under the Adhiniyam, 1983.

9. Having heard learned counsel for both sides and having perused the record, this Court frames the following principal point for determination:

Whether the contract between the parties constitutes a 'works contract' within the meaning of the M.P. Madhyastham Adhikaran Adhiniyam, 1983, so as to oust the jurisdiction of the Arbitral Tribunal constituted under the Arbitration and Conciliation Act, 1996, and to vest exclusive jurisdiction in the Madhyastham Tribunal?

10. The M.P. Madhyastham Adhikaran Adhiniyam, 1983 was enacted to provide a specialised forum for resolution of disputes arising from 'works contracts' between State Government/Public Sector Undertakings and contractors, with the objective of ensuring expeditious and expert adjudication. The Madhyastham Tribunal created thereunder has exclusive jurisdiction over all such disputes, and recourse to any other forum including arbitration under the Act, 1996 is barred.

11. The original definition of 'works contract' under Section 2(1)(i) of the Adhiniyam, 1983 covered agreements for execution

of works relating to construction, repair or maintenance of buildings, dams, canals, roads, powerhouses, transformers and allied works. By the amendment dated 24.04.1990, the definition was significantly expanded in two material respects: first, it expressly included 'powerhouse' and 'transformer' in the category of enumerated works; and second, it extended the definition to cover 'an agreement for supply of goods or material and all other matters relating to the execution of any of the said works.' A further notification dated 04.11.1996 included agreements for execution of works relating to construction, repair or maintenance of 'electric lines' within the scope of specified works.

12. The cumulative effect of these expansions is that any agreement for supply of goods or material which is integrally connected to, or directly relates to, the execution of works enumerated in Section 2(1)(i) including powerhouses, transformers and electric lines is brought within the definition of 'works contract' under the Adhinyam, 1983.

13. Clause 4 of the agreement dated 29.09.2007, which defines the scope of contract, provides for supply, testing and delivery of disc insulators specifically 4,51,200 Nos. of 70 KN and 2,22,600 Nos. of 90 KN EMS ball and socket type Porcelain Disc Insulators to project sites/area stores, along with local handling, transportation and transit insurance. The insulators were procured exclusively and specifically for installation in 400 KV, 220 KV and 132 KV EHV transmission lines being constructed by the Appellant under an ADB-funded infrastructure programme.

14. This Court is of the considered view that the phrase ‘relating to the execution of any of the said works in the expanded definition does not require that the supplier itself must execute the infrastructure works. The test is one of nexus and purpose whether the agreement for supply of goods is meaningfully connected to the execution of specified works. The disc insulators in question are not general-purpose commercial goods; they are specialised components procured exclusively for installation in EHV transmission lines, which constitute ‘electric lines’ as covered by the 1996 notification and infrastructure linked to powerhouses and transformers as specified in the 1990 amendment. The connection between the supply and the execution of transmission works is not incidental but direct and integral.

15. This interpretation finds support in the scheme and purpose of the Adhiniyam, 1983. The legislature’s intent in expanding the definition in 1990 was evidently to bring within the specialised forum disputes relating not merely to execution contractors but also to suppliers whose contracts are the very substratum of infrastructure projects. A supply contract for goods procured solely for a specific enumerated work, pursuant to a project document, forms the material substratum of that work and cannot be disaggregated from it simply because the physical act of installation is to be performed by the purchaser or another contractor.

16. This Court also notes the Full Bench judgment of this Court in Viva Highways Ltd. v. M.P. Road Development Corporation Ltd. and the judgment of the Hon’ble Supreme Court in Lion Engineering Consultants v. State of Madhya Pradesh [(2018) 16

SCC 758], which affirm that the question of jurisdiction of the Madhyastham Tribunal is not merely a procedural objection but a substantive, non-waivable limitation on the competence of any other adjudicatory forum. The objection that the subject matter falls within the exclusive jurisdiction of the Madhyastham Tribunal may be raised at any stage, including at the stage of proceedings under Section 34/37 of the Act, 1996, and is not susceptible to waiver by conduct or participation.

17. These issues are no longer res integra. In *Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd.*, (2025) 10 SCC 750, the Hon'ble Apex Court clarified that it would be open for the parties to raise an objection regarding lack of jurisdiction, in view of the applicability of the M.P. Act, 1983, at the stage of Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. However, the consequence of such objection would depend on the following circumstances:

66.1. Where arbitration proceedings are ongoing and no statement of defence has been filed, it is open to the parties to raise an objection regarding lack of jurisdiction due to the applicability of the M.P. Act, 1983. The parties may also approach the High Court under Article 227 of the Constitution for transfer of the proceedings to the M.P. State Arbitration Tribunal.

66.2. Where arbitration proceedings are ongoing but the statement of defence has already been filed (i.e., the stage for raising jurisdictional objections has passed), such objections shall not be entertained. Since proceedings have substantially progressed,

transfer to the M.P. State Arbitration Tribunal would not be appropriate, and arbitration should be allowed to conclude.

66.3. As held in *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors*, (2018) 10 SCC 826, where arbitration proceedings have concluded and an award has been passed, and no jurisdictional objection was raised at the appropriate stage, the award cannot be set aside solely on the ground of lack of jurisdiction.

66.4. Any award passed by an Arbitral Tribunal under the 1996 Act, in cases where the M.P. Act, 1983 was otherwise applicable, may be challenged under Section 34 and thereafter Section 37 of the 1996 Act, along with other relevant provisions.

66.5. Such an award must, however, be executed in accordance with the provisions of the M.P. Act, 1983.

66.6. Where an objection regarding applicability of the M.P. Act, 1983 was raised in the written statement or statement of defence, but no steps were taken to challenge jurisdiction under Section 16 of the 1996 Act, or such challenge was rejected under the legal position prevailing prior to the decision in *L.G. Chaudhary (2)*, then, in light of *Modern Builders v. State of M.P.*, (2024) 10 SCC 637, the award shall not be set aside solely on the ground of lack of jurisdiction.

18. From the principles laid down in *Gayatri Project Ltd.*, it is evident that an objection regarding jurisdiction under the M.P. Act, 1983 can be raised at the stage of Section 34 of the Arbitration and

Conciliation Act, 1996 after the award is passed. However, such objection cannot be the sole ground for setting aside the award.

19. In other words, if there are independent valid grounds for setting aside the award, this objection may be considered along with them. In such a situation, the dispute may then be referred to the M.P. Madhyastham Tribunal for adjudication in accordance with the M.P. Act, 1983.

20. Accordingly, this Court holds that the present contract being an agreement for supply of disc insulators specifically for use in EHV transmission lines under an ADB-funded power sector investment programme constitutes a 'works contract' within the meaning of Section 2(1)(i) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983, as amended. However, in view of the law laid down by the Hon'ble Supreme Court in *Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd.*, (2025) 10 SCC 750, since the Appellant did not raise any objection to the jurisdiction of the Arbitral Tribunal at the relevant stage either in its statement of defence or by way of an application under Section 16 of the Act, 1996 the arbitral award cannot be set aside solely on the ground of lack of jurisdiction. The award is, however, found to suffer from patent illegality and is liable to be set aside on that ground.

21. The learned Arbitrator, while deciding Claim No. 2, framed the question whether the Respondent took delivery of 90 KN insulators as per the terms of the Revised Delivery Schedule mentioned in the letter dated 20.04.2009, and, if not, whether the Claimant was entitled to claim damages from the Respondent for breach of contract.

21. The delivery of 1,57,680 Nos. of 90 KN insulators was a subsequent development. The question before the learned Arbitrator was that whether the amendment to the original agreement was a valid agreement under the provisions of the Contract Act. Section 62 of the Contract Act permits the parties to (i) substitute a new contract for the original, (ii) rescind it, or (iii) alter it, and if that be so, then the original contract need not be performed. The amendment sought to alter the contract in respect of the balance quantity of insulators, amounting to 2,22,600 minus 11,520 = 2,11,080 Nos. of 90 KN, which were to be supplied through Indian manufacturers, the freight charges were to be borne by the Claimant, price variation was not made available, and the standard of goods to be supplied was changed to IS-731.

22. The learned Arbitrator found that the Respondent was not entitled to reject the goods supplied by the Claimant through the Chinese manufacturer amounting to 45,000 Nos., and that no additional goods were supplied. The Arbitrator held that both parties were under a misapprehension regarding the fact that the goods had been rightly rejected. The Arbitrator further observed that, in the case of 90 KN insulators, after acceptance of 11,520 insulators there was no occasion to amend the contract requiring supply of 90 KN insulators through Indian manufacturers, and that such an amendment was independent and could not be mixed up with the supply of 70 KN insulators. The learned Arbitrator was of the view that the amendment in the contract for 90 KN insulators was obtained by economic coercion and undue influence, contrary to the provisions of the Contract Act and also contrary to the guidelines of the Asian Development Bank. The Arbitrator held

that this was an error on the part of both parties in substituting a new amended contract without any substantial reason, except the dominant desire of the Respondent to alter the contract by the exercise of its economic power. These errors were held to be essential to the entering into of the amended contract, rendering it a void agreement within the meaning of Section 20 of the Contract Act.

23. The learned Arbitrator further held that the Respondent had committed a breach of the original contract by rejecting the goods and could not be permitted to take advantage of its own wrong to require the Claimant to enter into an altered contract to supply goods through Indian manufacturers. In the opinion of the Arbitrator, a substantial part of the insulators supplied by the Claimant were rejected by the Respondent on invalid grounds, and the Respondent had prevented the Claimant from fulfilling further supply. The original contract was accordingly held to have been aborted and to have ceased to subsist. Since both parties had sought to amend the contract on the assumption that it subsisted, whereas it did not, there was no question of altering a contract that had already come to an end, and the purported amendment under Section 62 of the Contract Act was therefore a nullity.

24. On Claim No. 2, the Claimant had asserted entitlement to reimbursement of Rs. 3,27,566.65 paid by it towards extension of Bank Guarantee and Letter of Credit in respect of 1,57,680 Nos. of 90 KN insulators to be supplied by Indian Potteries Ltd. and Allied Ceramics Pvt. Ltd., contending that the Respondent had delayed taking delivery, thereby compelling the Claimant to extend the

Bank Guarantee and Letter of Credit. The Respondent denied that the Claimant had paid any such amount and contended that, in any event, the Claimant was responsible for extension of the Bank Guarantee until expiry of the warranty period. The learned Arbitrator, upon examination of the evidence of Shri Manoj Agrawal (Paragraphs 27 to 30) and the documentary exhibits C-18 and C-19, recorded that demand drafts of Rs. 19,995/- (towards Letter of Credit extension) and two demand drafts of Rs. 1,53,748.35 and Rs. 1,53,823.30 (towards Bank Guarantee extension) had been paid by the Claimant. The testimony remained unchallenged in material particulars, as the Respondent's witness Shri M.K. Mittal admitted payment of the said amounts while asserting only that the Claimant had paid a differential amount. The learned Arbitrator accordingly awarded the total claim of Rs. 3,27,566.65 under this head.

25. On Claim No. 3 concerning invocation of the Performance Bank Guarantee, the learned Arbitrator held that the Respondent was not justified in rejecting the entire lot of 45,000 Nos. of 90 KN insulators supplied from China, and that no insulators of 90 KN were rejected in the second lot. The Bank Guarantee dated 12.10.2007 for Rs. 67,95,388/- had been furnished as security deposit for faithful performance of the contract dated 29.09.2007 for supply of 90 KN disc insulators. Since the Respondent had infringed the contract by illegally rejecting 45,000 Nos. of 90 KN insulators and a further 14,848 Nos. of 70 KN insulators (totaling 1,04,848 Nos.), the Respondent could not claim any amount under the Bank Guarantee. The learned Arbitrator held that the contract for supply of 2,84,650-disc insulators had been rendered void, the

Respondent could not recover any money for non-compliance of a void contract, and the invocation of the Bank Guarantee by telegram and letter dated 30.05.2011 was illegal. Accordingly, the Arbitrator directed the Respondent to reimburse the amount of Rs. 6,79,51,388/- to the Claimant. The question of interest was left to be decided separately.

26. The learned Commercial Court, while examining the application under Section 34 of the Act, 1996, referred to several judgments of the Supreme Court regarding the scope of interference under that provision and observed that an award is deemed to be against public policy only when it is based on fraud or corruption. On the basis of that discussion, the learned court held that the award did not conflict with public policy under the Arbitration and Conciliation Act, 1996, had been passed after consideration of all aspects of the dispute in accordance with the general terms and conditions of the agreement and on the basis of the documents submitted by both parties, and that no illegality or patent illegality was apparent. The application was accordingly dismissed.

27. It is evident from the perusal of the impugned order that there is no finding or discussion in respect of the specific objections raised by the Appellant, nor any examination of the arbitrator's findings with reference to whether those findings were contrary to public policy or disclosed patent illegality. The Respondent company had clearly failed to supply material as per the specifications and conditions of the contract, and those specific objections required to be considered by the learned Commercial

Court in order to determine whether the award was against public policy, or contrary to the Contract Act or the Sale of Goods Act. The failure to do so renders the impugned order unsustainable.

28. To appreciate the award is legal or patently illegal, it is preferable to consider the provision of 20, 62, 63,73,74 of the contract act, which is as under-

“20. Agreement void where both parties are under mistake as to matter of fact. —Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

62. Effect of novation, rescission, and alteration of contract. —If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

63. Promisee may dispense with or remit performance of promisee. —Every promisee may dispense with or remit, wholly or in part, the performance of the promisee made to him, or may extend the time for such performance ,or may accept instead of it any satisfaction which he thinks fit.

73. Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

74. Compensation for breach of contract where penalty stipulated for.—

1.[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation. —A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the [Central Government] or of any [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation. —A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.”

29. The learned Tribunal has opined that both parties were under a misconception of facts and acted under a mistake; therefore, the contract is void under Section 20 of the Contract Act. It further held that, after novation of the contract, the respondent is not liable to fulfil the obligations of the contract, and the bank guarantee cannot be extended to a new contract.

30. However, the above finding cannot be sustained in fact or in law. The new contract was executed after termination of the original contract due to non-performance of its conditions and the supply of substandard articles. Once the contract is terminated, the defaulting party is liable to pay a penalty under Section 74 of the Contract Act.

31. It is evident from the record that the respondent failed to comply with the contract by not supplying standard articles as required. After termination of the contract, the appellant entered a new contract and had to incur additional expenses to procure the articles, thereby suffering losses due to the non-performance of the original contract.

32. To compensate for these losses, under Sections 73 and 74 of the Contract Act, the appellant is entitled to invoke and confiscate the bank guarantee. It is pertinent to observe that the relevant provisions of the Contract Act were ignored and wrongly applied by the Tribunal; therefore, the award is patently illegal.

33. In the present case at hand, we take note of the following circumstances emerging from the facts on record: It is an admitted fact that at the time of constitution of the Arbitral Tribunal, the

respondent never objected to the invocation of arbitration under the 1996 Act and both the parties proceeded to nominate their respective co-arbitrators. On the date of invocation of the 1996 Act, and commencement of arbitration proceedings, as well as of the date when the arbitration proceeding concluded and the award in question passed, the respondent herein never raised any objection to the Arbitral Tribunal's lack of jurisdiction during the arbitration proceedings either in its statement of defence or by way of an application under Section 16 of the 1996 Act. Even when the award was challenged by the respondents, the initial petition filed by them under Section 34 of the 1996 Act also did not contain any objection as regards the lack of jurisdiction of the Arbitral Tribunal. The ground of lack of jurisdiction was introduced by the respondents herein only after the decision of L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] by way of an application for amending the grounds of its petition under Section 34 of the 1996 Act i.e. after the award had been passed.

34. The present case is squarely covered by the decision of the Hon'ble Supreme Court in Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd., (2025) 10 SCC 750, more particularly paras 64 to 66 thereunder, and as such once the award had been passed and no objection as to the jurisdiction of the Arbitral Tribunal had been taken at the relevant stage, the award cannot be annulled only on the ground of lack of jurisdiction. **However, the award is found to be patently illegal inasmuch as the learned Arbitrator has not considered the objections regarding Sections 20, 73,74 and 62 of the Contract Act, and has misapplied**

Section 62 of the Contract Act to a bilateral contractual amendment validly entered into between the parties; therefore, this Court has no option but to set aside the award on the ground of patent illegality.

35. In view of the foregoing, the present Commercial Arbitration Appeal is allowed. The impugned order dated 03.01.2024 passed by the learned 24th District Judge (Commercial Court), Jabalpur, is hereby set aside. The arbitral award dated 16.11.2018 passed by Justice (Retd.) Shri S.C. Pandey, Sole Arbitrator, is also set aside.

36. **The award is set aside on the ground of patent illegality, inasmuch as the learned Arbitrator has: (i) failed to consider the Appellant's objections founded on Sections 20, 73 and 74 of the Contract Act; (ii) misapplied Section 62 of the Contract Act by treating a bilateral contractual amendment, validly entered into between the parties, as a nullity; and (iii) rendered a finding on rejection of goods that is contrary to the documentary record and the terms of the contract. Each of these infirmities independently constitutes patent illegality within the meaning of Section 34(2A) of the Act, 1996, warranting interference.**

37. The parties are at liberty to have their disputes adjudicated by the Madhyastham Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, as per law. Any amount deposited or paid pursuant to the award or any order of this Court shall be dealt with in accordance with the directions of the said Tribunal.

38. Any interim order or stay, if in operation, shall stand vacated forthwith. There shall be no order as to costs.

39. Both the Arbitration Appeals are disposed of with the aforesaid.

Let photocopy of this order be placed in connected case.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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