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Report on M/s. New Ark Project in Sy. No.76/2 of Kasavanahalli village, Varthur Hobli, Bangalore East Taluk, Bangalore in compliance to the directions issued by Hon'ble NGT in review application No.52/2018 IN OA No. 595/2018 (M.A No.1769/2018).

Ref: Review application No.52/2018 IN OA No. 595/2018 (M.A No.1769/2018).

Presided by C.Jayaram, Chairman, KSPCB.

1. In accordance with the directions issued by National Green Tribunal, Principal Bench, New Delhi a Joint Committee was constituted on 29.03.2019 to consider the issues of violations if any in respect of Environmental Laws and Rules, EIA Notification and Buffer Zone Regulations by M/s. New Ark Project at Kasavanahalli Village, Varthur Hobli, Bangalore. The Joint Committee consists of Dr.Dola Battarcharjee, Research Officer, Regional Office, MoEF & CC, Bangalore, Sri. G.Tirumurthy, Additional Director, Regional Directorate, CPCB, Bangalore, Sri. Sadiq Ahmed, Senior Environmental Officer, KSPCB, Bangalore. Sri. T.Rajendra, Scientist 'D', CGWA, Bangalore. Sri. Jayashankar, Assistant Director of Town Planning, BBMP, Bangalore, Smt. Malathi, Executive Engineer, Storm Water Drains, Mahadevapura Zone, BBMP, Bangalore and the jurisdictional officers of BBMP and KSPCB. A preliminary meeting of the Joint expert committee was convened on 5.4.2019 by the Presiding Officer and directed the committee to go through the directions issued by the Hon'ble NGT in review application No.52/2018, dated 14th March 2019.

2. The committee requested the Presiding Officer to address letters to the concerned officers/authorities for verification of various approvals namely ground water abstraction, building plan sanction, built up area, status of kharab land if any and to make them available to the committee for verification and inspection.

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Accordingly, letters were written to the Engineer in Chief, Ground Water Authority, BWSSB, Joint Director, Town Planning North, BBMP, NR Square, Chief Engineer, Storm Water Drain, BBMP and Assistant Commissioner, Land Conversion, Office of the Deputy Commissioner, Bangalore Urban for providing all the information and records pertaining to M/s. New Ark Project.

3. M/s. New Ark infrastructure project is situated Sy. No.76/2 of Kasavanahalli village and the project area of 1 acre 4 guntas falls in Kaikondrahalli lake catchment. Originally the project site being agriculture land was converted to high tech land use on the request of project proponent during 2010 by the Special Deputy Commissioner, Revenue, Bangalore Urban District in his order No. ALN EVH NR 162/2009-10, dated 29.01.2010. Further, the applicant approached Bangalore Development Authority and converted the land use from high tech to commercial purpose on 28.5.2010. As per the revised Master Plan 2015 of BDA, the project site is located in Ring-III of the Bangalore city planning area. As per the planning area Zoning Regulation the project site falls in high tech zone. The BBMP has sanctioned the plan during 2015 by considering a maximum permissible coverage area of 55%. The sanction is accorded for the permissible FAR of 2.25. As per the sanction, the sanction is accorded for the construction of residential FAR of 8645.23 sq. mtrs and commercial FAR of 473.31 sq. mtrs. The proponent has taken the consent from KSPCB during 8th June, 2016 for building 72 flats with a total built up area of 14,344.81 sq. mtrs.

4. The joint expert committee after inspection has submitted a report dated 13.5.2019 along with 14 Annexure. The report along with the Annexure is enclosed. The important issues brought out in the report are as follows:

   a. The project proponent has obtained consent for establishing 72 residential flats with a total proposed built up area of 14,344.81 sq. mtrs from KSPCB

on 8.6.2016. However, the proponent has obtained building plan sanction from BBMP for total built up area of 12,975.48 sq. mtrs with a break up of 8,645.23 sq. mtrs residential, 473.31 sq. mtrs of commercial, the balance 2,641.33 sq. mtrs basement area and 47.87 sq. mtrs of terrace floor. While sanctioning the plan, the Joint Director, Town Planning has mentioned that there are no classified drains noticed in the area as per the revised Master Plan 2015 and hence no nala buffer zone was considered. However 3.5 guntas of Dhari Kharab is found to be merged in the existing 12.2 mtrs wide public road adjacent to the property. Apart from this, JD Town Planning mentions that, 219.41 sq. mtrs of site area is relinquished to BBMP for road widening. The committee during the inspection has observed the construction activity of both residential and commercial is nearing completion and a few residential flats are occupied. Since, a few flats are occupied the STP is under operation. The project proponent has not obtained any consent from KSPCB for operating the STP. As could be seen from the report the consent taken from KSPCB is for a total built up area of 14,344.81 sq. mtrs for residential purposes. The actual plan sanction by the BBMP is for a total built up area of 12,975.48 sq. mtrs consisting of both residential and commercial usage. Though the report submitted states that the project is nearing completion but has not provided the information regarding the actual built up area to know the difference between the sanctioned plan and actual built up area. The Expert committee has requested the Assistant Director, Town Planning to provide the actual built up area to know the variations if any between the sanctioned plan and actual constructed area and also to know the applicability of Environmental Clearance for the project.

b. The inspection team has noticed two bore wells sunk in the premises of the project area for abstracting ground water. It is also reported by the

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Committee that, project proponent has not produced any approvals from the competent authorities for the abstraction of the ground water. The Engineer in Chief, BWSSB in charge of giving permission for abstracting ground water has reported in his letter dated 22.4.2019 enclosed as Annexure-14 to the committees report clarifies that the project proponent has violated by not obtaining permission for abstracting the ground water from the competent authority. Further, committee's report also states that the proponent has not obtained permission from BWSSB for supply of water and disposal of used water.

c. The project is located at a distance of 320 mtrs east of Kaikondrahalli lake.

d. The Environmental Officer, KSPCB, Bommanahalli has issued notice against the non-compliance of CFE conditions show-causing the withdrawal of the consent issued and to inform BESCOM to disconnect power supply under Section 33(A) of Water (Prevention and Control of Pollution) Act, 1974.

e. The revised Master Plan 2015 zonal regulation for the proponent area is earmarked as high tech zone. The Special Deputy Commissioner, Revenue has also issued orders for converting the agriculture land for utilization of the land as high tech zone as prescribed in RMP 2015. However, Bangalore Development Authority has further changed the land use from high tech to commercial use.

f. The violations in respect of the requirement of Environmental Clearance and built up area more than the sanctioned plan if any will be known only on the receipt of actual built up area measurements to be submitted by the Assistant Director, Town Planning, BBMP. The Assistant Director, Town

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Planning, BBMP has requested two weeks time for submitting the actual built up area of M/s. New Ark Project. The veracity if any will be submitted at the earliest on the receipt of the actual measurement from Assistant Director, Town Planning, BBMP.

5. The report is submitted for placing it before the Hon'ble NGT, Principal Bench, New Delhi for necessary orders.

14/5/2019

C.Jayaram
Karnataka State Pollution Control Board

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REPORT OF EXPERT COMMITTEE, AS PER NGT ORDERS DATED 14.03.2019 IN THE MATTER OF REVIEW APPLICATION NO. 52 OF 2018 (SHRI B RAGHUPATHY V/s. UNION OF INDIA & OTHERS)

1.0. PREAMBLE

In the Review Application No. 52 of 2018 (SZ) filed by Mr. B. Raghupathy V/s Union of India & ors., the Hon'ble National Green Tribunal (NGT) issued Orders dated 14.03.2019 (**Annexure 1**), and directed that ***"Before considering the issues raised in the Review Applications with regard to violations of the provisions of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, EIA Clearance notification requirement and buffer Zone, we are of the view that it is necessary to obtain an expert report on the subject from a committee comprising representatives of MoEF&CC, CPCB, CGWA, BBMP and KSPCB. The KSPCB will be nodal agency for co-ordination and compliances. The report may be furnished to this Tribunal within two month."***

In compliance of above mentioned order, the Karnataka State Pollution Control Board (KSPCB) has constituted monitoring committee comprising following members as per Hon'ble NGT order and a called preliminary meeting on 5.4.2019 and issued Office Memorandum for the same vide order No. PCB/CNO\P/41/Gen-New ARK/NGT/6900 dated 29.3.2019 (**Annexure 2)** to carryout inspection of M/s. New ARK projects by the Expert Committee. The constitutions of the committee are:

1.	Representative from	Ministry of Environment, Forests and Climate Change, Southern zone office, E-3/240, Kendriya Sadan, 4th Floor, E&F wings, 17th Main Road, 2nd Block, Koramanagala Bengaluru –560034
2.	Representative from	Regional Directorate, Central Pollution Control Board, Nisargan Bhavan, 1st Floor, 7th D Main, Shivanagar, Bangalore - 560079
3.	Representative from	The commissioner, Bruhat Bengaluru Mahanagara Palike, Hudson Circle Bangalore

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4.	Representative from	The Regional Director, Central Ground Water Authority , 27th Main, Sector-1, 7th cross road, H.S.R layout, Bengaluru – 560102
5	Member Convener	Regional Senior Environmental Officer, Karnataka State Pollution Control Board, 3rd Floor Nisargha Bhavan, Shivanagar, Bengaluru – 560079

2.0 PRIMARY MEETING OF THE EXPERT COMMITTEE

Upon the formation of Expert Committee, a preliminary meeting of Expert committee members was convened on 05.04.2019 by the Chairman, KSPCB as Presiding Officer at KSPCB, Head Office, Bengaluru. In the meeting, the presiding officer instructed the committee to go through the writ petition and verify the facts and to fix the inspection on 25.04.2019. The copy of the proceedings of the preliminary meeting is enclosed as **Annexure 3**. During the preliminary meeting, the Advocate on behalf of the compliant attended the meeting and explains the grievances. The Expert Committee took a note of the same for verifications.

In the meeting, the Expert Committee requested the KSPCB to address a letter to the concern authorities for verifications of necessary approval for extraction of ground water, building plan sanction, build up area, status of Kharab land etc. and made available during the inspection by the Expert Committee.

3.0 ABOUT M/s. NEW ARK PROJECTS

M/s New ARK projects, is an infrastructure project established at Sy No 76/2 of Kasavanahalli village, Varthur Hobli, Bengaluru East Taluk, Bangalore having residential and commercial building with 72 Number of flats with buildup area of 12975.48 M^2..

The project site is located next to Kasavanhalli – Haraluru Road in Kasavanahalli village and there are residential area around the project and one commercial building towards northern side after the cross road. The details are

- Western side residential buildings.
- Southern side apartment building.
- Eastern side Kasavanahalli –Haraluru Road Residential building.
- Northern side cross road and commercial building.

The project falls in Kaikondrahalli catchment area. Project is situated towards eastern direction of the lake and about 320 meters from the Kaikondrahalli Lake.

The project site was converted from Agricultural land to Hi-tech Use from Deputy Commissioner, Bangalore Urban District dated 29.01.2010. Afterwards the same is converted from Hi-tech Use to Commercial use from Bangalore Development Authority (B.D.A) dated 28.05.2010. Then the plan sanctioning authority i.e, BBMP has sanctioned the Building Plan for the said project as per the Section 4.4.2 – Regulations under Commercial Business of Revised Master Plan 2015. The same are enclosed as **Annexure 4 (a), (b) & (c).**

The necessary approvals are:

1. The project authorities obtained plan sanction on 5.9.2015 dated 13.10.2015 from Joint director (Town Planning North), Bruhat Bengaluru Mahanagara Palike as Commercial / Residential Building. **(Annexure 5)** for total build up area 12,975.48 M^2.

2. The project authorities obtained consent for establishment to construct Residential Apartment with 72 flats having buildup area 14,344.81 M^2. from the KSPCB vide order No PCB/220/CNP/H-196 dated 8.6.2016. **(Annexure 6)**

It is noted from above two permission obtained that there is difference in the total build up area quoted in the two documents as well as project as Commercial / Residential in BBMP plan and as Residential Apartment in CFE of KSPCB.

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3.0 INFORMATION REQUESTED

As per the decision of the Preliminary meeting of the Expert Committee, the Karnataka State Pollution Control Board (KSPCB) addressed a letter to concern departments to furnish the following:

(i) A letter vide NO.PCB/CNP /42/ GEN /18 / 388 dated 10.4.2019 to the Engineer in Chief, BWSSB, Cauvery Bhavan, KG Road, Bangalore 560001 to furnish the details of the *permission accorded by Karnataka Ground Water Authority for extraction of ground water* by M/s. New ARK Projects. (**Annexure 7),**

(ii) A letter NO.PCB/CNP /42/ GEN /18 / 389 dated 10.4.2019 to The Joint Director Town planning (North), Head Office BBMP, NR Square, Bangalore 560001 to furnish the details of the plan sanctioned giving break up of number of flats with built-up area in case of Residential and commercial, Details of type of drains existing and the buffer to be maintained as per Revised Master Plan (RMP) and also the present status of the Kharab land of 3.5 guntas, as mentioned in DC conversion order. (**Annexure 8),**

(iii) A letter NO.PCB/CNP /42/ GEN /18 / 443 Dated 12.4.2019 to The Joint Director Town planning (North), Head Office BBMP, NR Square, Bangalore 560001 to furnish the details of built-up area as per supreme court order in addition to the points mentioned in the letter dated 10.4.2019 (**Annexure 9)**, by indicating extract of the Built-up area as per notification dated 14.9.2006 that, for the purpose of Environmental Clearance the authority is not concerned whether the area to be constructed is Floor space index(FSI) area or Non FSI area.

(iv) A letter NO.KSPCB/SEO-South/BNG/19-20/68 dated 27.4.2019 to Chief Engineer, Storm water drain, BBMP to submit the details of drains /nala near the project area (**Annexure 10**). ***The Executive Engineer, Storm water drain, requested ADLR, Bangalore urban to survey the area***

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in question and to submit the details of drain alignment but committee not received any information from the ADLR, and

(v) A letter NO.KSPCB/SEO-South/BNG/19-20/69 dated 27.4.2019 to Assistant Commissioner, to submit point wise compliance to conversion order dated 29.1.2010 ***but they have not submitted any information*** (**Annexure 11).**

4.0 INSPECTION OF EXPERT COMMITTEE

M/s. New Ark Projects, Bengaluru was inspected by the Expert committee on 25.04.2019, the expert committee members present and others are as follows:

S. No.	Department	Expert Member
1.	Ministry of Environment, Forests and Climate Change	Dr. Dola Bhattacharjee, Research Officer, Regional Office (Southern Zone), Bengaluru
2.	Central Pollution Control Board	Sri. G. Thirumurthy Additional Director, Regional Directorate, Bengaluru
3.	Karnataka State Pollution Control Board	Sri. Sadiq Ahmed, Senior Environmental Officer, Bangalore-South
4.	Central Ground Water Authority	Sri. T. Rajendiran, Scientist D
5.	Bruhat Bengaluru Mahanagara Palike	(i) Sri. Jayashankar.K Asst. Director of Town Planning, Joint Director, Town Planning North. (ii) Smt Malathi.R Executive Engineer, Storm Water Drain, Mahadevapur.

Other Officers present during the visit are as follows:

S. No.	Department	Expert Members
1.	Bruhat Bengaluru Mahanagara Palike	1) Sri. H.N.Jayasimha, Asst. Executive Engineer, Storm Water Drain. 2) Sri. Ramachandrappa Asst Engineer, Joint Director Town Planning -North. 3) Sri. Raghavendra .B.N, Asst Engineer, Storm Water Drain.
2.	Karnataka State Pollution Control Board	1) Sri. Anilkumar.M Environmental Officer, Bommanahalli 2) Sri. D.P.Mahendra Deputy Environmental officer, Bommanahalli

Sri. Arun Pradeep, Representative of petitioner was present during the joint inspection and requested the Expert Committee to include, builtup area details, drain/nala buffer, discrepancies in various approvals obtained by the project authorities and also details of the Kharab land.

During the inspection of the Expert Committee on **April 25, 2019**, it is observed that the construction activity of the residential and commercial building is nearing completion. Even project authority has handed over a few flats to buyer and found occupied. The project authorities have provided Sewage Treatment Plant (STP) for the treatment of domestic sewage. During inspection it was observed that the STP was in operation, the generation of sewage and the operation of STP was not up to the designed capacity as the sewage generation is much lower.

It was observed that there are two nos. of bore wells within the project site and the project authorities were asked to produce the necessary approvals obtained from the competent authorities for abstraction of ground water and they failed to produce any document.

The representative of Central Ground Water Authority (CGWA) has clarified that, now they have authorized Karnataka State Ground Water Authority (KSGWA) to give necessary permission for extraction of ground water before drilling any bore wells.

5.0 STATUTORY COMPLIANCES

The Expert Committee verified the statutory compliances;

5.1 ENVIRONMENTAL CLEARENCE

As per the Environmental Impact assessment notification dated 14.9.2006, the building and construction project which are required to obtain prior environmental clearance are:

SCHEDULE:

List of Projects or Activities Requiring Prior Environmental Clearance

Project Activity	Category with Threshold Limit		Conditions , if any
	A	B	
Building /Construction projects/Area development projects and Townships			
8 (a) Building /Construction project	-	≥ 20000 Sq Mtrs and < 150000 Sq Mtrs built up area #	*# Built up area for covered construction; in the case of facilities open to sky it will be the activity area.*

As requested by the Expert Committee, the Joint Director Town Planning (North), Bruhat Bengaluru Mahanagara Palike (BBMP) vide their letter No. BBMP/Addl. Dir / JDNORTH/ LP/173/2015-16 dated 30.04.2019 submitted that the total sanctioned area is 12975.48 M^2 out of which Commercial FAR area is 473.31 M^2 and Residential FAR is 8645,23 M^2. The total sanctioned area shown in the building plan sanctioned is as per the Zoning Regulations of

Revised Master Plan – 2015 and Building Bye Laws -2003. Copy of the same is enclosed as **Annexure 12.**

Also clarified by Joint Director Town Planning that

A. There are no classified drains as per Revised Master Plan- 2015 in and around the property in question within a distance of 50 M. Hence, no nala buffer was considered at the time of sanction.

B. As per the DC conversion order it is found that there is no Kharab land in the converted site area. But as per Akhar Bandh document there is a Bandi Dhari Kharab of 3.5 Guntas, which is found to be merged in the existing12.2 M wide public road adjacent to the property. This site area considered for plan sanctions is exclusive of this 3.5 Guntas of Kharab land.

C. Apart from this, an area of 219.41 M^2 is reserved for road widening as per RMP- 2015 which is already relinquished to BBMP through a registered relinquishment deed dated 19.09.2016.

The report of the Joint Director Town Planning (North), Bruhat Bengaluru Mahanagara Palike (BBMP) on built-up area was mailed to MOEF & CC to submit the clarification on the built-up area as per Supreme Court order to verify the applicability for Environmental Clearance. With respect to applicability of the Environmental Clearance, the Ministry of Environment, Forests and Climate Change, Southern Zone, clarified that ***as per the plan sanction from the BBMP the total built up area is 12975.48 M^2, hence project doesn't attract provision of EIA notification (2006) and does not require environmental clearance for its construction.*** Copy of the MOEF letter enclosed as **Annexure 13.**

However during the field visit, the Expert Committee was unable to calculate exact As built area of the project constructed against the sanctioned plan. In view of that the Expert Committee requested The Assistant Director of Town

Planning present during the inspection to provide exact As built area of the project constructed against the sanctioned plan, to know the applicability of Environmental Clearance.

5.2 WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974, and AIR (PREVENTION AND CONTROL OF POLLUTION) ACT,1981

The project authorities obtained Consent For Establishment (CFE) of the KSPCB vide order No PCB/220/CNP/H-196 dated 8.6.2016 for establishment of Residential Apartment with 72 Flats having built-up area 14,344.81 M^2 with a validity period of 5 Years from the date of issue which is enclosed as **Annexure 6.** The important CFE conditions are:

- Not to take any expansion / diversion without the prior consent of the Board.
- To obtain necessary license / clearance from their relevant agencies before taking construction.
- To obtain Consent for Operation (CFO) from the Board before handing over of the applicant complex to residents association.
- To inform the exact date of commissioning of the sewage treatment plant shall be informed to the Board 45 days in advance so as to make necessary inspection of STP.

During the inspection, the violations noticed by the members of the expert committee to the consent for establishment order are listed below:

1. The project authority has constructed Commercial Building without the prior consent of the Board, whereas they have obtained Consent for Establishment of Residential Apartment (72 flats) only.

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2. Not obtained necessary license / permission for drawing ground water either from CGWA or from SGWA. The same is confirmed by the Bangalore Water Supply Board (BWSSB) vide their letter No 262/20019-20 dated 22.4.2019, stating that M/s. New ARK project located at Sy. no 776/2, of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, Bengaluru have not applied to their office for seeking permission to drill the borewell in their premises and no permission issued. Copy of the BWSSB letter is enclosed **Annexure 14.**

3. The project authorities have given occupancy to few flats without obtaining occupancy Certificate from the BBMP and without obtaining Consent for Operation (CFO) from the Board.

4. The committee has verified permission, if any obtained from BWSSB regarding the Water supply and sewerage connection to the project and observed that they have not taken any permission from BWSSB.

5. The project authorities have not informed the exact date of commissioning of the sewage treatment plant and not applied for Consent for Operation of the STP.

In view of above said facts & observations and non compliance to the CFE, the Environmental Officer, Bengaluru – Bommanahalli, KSPCB issued show cause notice vide order No KSPCB/RO- BOM/EO/DEO/AEO-2/2019-20/45 dated 27.04.2019 to the project authority stating that why the Board shall not :

(i) Withdraw the consent for establishment issued

(ii) Issue directions to BESCOM to cutoff power supply and BWSSB to stop water supply to your project under Section 33 (A) of Water Act, 1974.

6.0 CONCLUSIONS

The Expert Committee concluded the following based on the field inspection and information / document submitted by concern departments i.e. BWSSB, BBMP, KSPCB :

a. M/s New ARK project, has constructed Residential and commercial building at Sy 76/2, KAsavanahalli Village, Varthur Hobli, Bangalore East Taluk.

b. There is difference in approval obtained from Joint Director Town Planning (North), BBMP and from Karnataka State Pollution control Board (KSPCB). The project authority obtained consent for establishment for residential apartment from KSPCB whereas obtained sanctioned plan from Town Planning Department, BBMP for Residential and Commercial building.

c. The total sanctioned area of the project is 12975.48 M^2. ***However, after receipt of "As built drawings" of the project from BBMP Town Planning authorities, the committee will verify the same and will submit the final report on the applicability of Environmental Clearance separately***.

d. As per the clarification submitted by the Joint Director Town Planning,

   - There are no classified drains as per Revised Master Plan - 2015 in and around the property in question within a distance of 50 M.

   - As per the DC conversion order, there is no Kharab land in the converted site area. But as per Akhar Bandh document there is a Bandi Dari Kharab of 3.5 Guntas, which is found to be merged in the existing 12.2 M wide public road adjacent to this property. ***This site area considered for plan sanctions is exclusive of this 3.5 Guntas Kharab.***

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- Apart from this an area of 219.41 M^2 is left out of the site area for road widening as per Revised Master Plan - 2015 ***which is relinquished to BBMP through registered relinquishment deed dated 19.09.2016***.

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13/5/19
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Additional Director,
Central Pollution Control Board,
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13/05/2019
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13/5/19
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