

न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति
Justice (Retd.) R. M. Lodha Committee
(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)

संदर्भ सं. जेआरएमएलसी/पीएसीएल/
Ref. No. JRMLC/PACL/

Order in respect of objection filed by Mr. Amar Deep Bhupathy
SEBI/PACL/OBJ/NS/00125/2024

BEFORE THE RECOVERY OFFICER, SEBI
ATTACHED TO
JUSTICE (RETD.) R.M. LODHA COMMITTEE
(IN THE MATTER OF PACL LIMITED)

| | |
|-------------------------|-----------------------------|
| File No. | SEBI/PACL/OBJ/NS/00125/2024 |
| Name of the Objector(s) | Mr. Amar Deep Bhupathy |
| MR No. | 34271-16 |

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") on 22.08.2014 had passed an order against PACL Limited, its promoters and directors, inter alia, holding the schemes run by PACL Ltd as Collective Investment Scheme ("CIS") and directing them to refund the amounts collected from the investors within three months from the date of the order. Vide the said order, it was also directed that PACL Ltd. and its promoters/ directors shall not alienate or dispose of or sell any of the assets of PACL Ltd. except for the purpose of making refunds as directed in the order.
2. The order passed by SEBI was challenged by PACL Ltd. and four of its directors by filing appeals before the Hon'ble Securities Appellate Tribunal ("SAT"). The said appeals were dismissed by the Hon'ble SAT vide its common order dated 12.08.2015, with a direction to the appellants to refund the amounts collected from the investors within three months. Aggrieved by the order dated 12.08.2015 passed by the Hon'ble



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SEBI Bhavan, BKC, Plot No. C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051



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SAT, PACL Ltd and its directors had filed appeals before the Hon'ble Supreme Court of India.

3. The Hon'ble Supreme Court did not grant any stay on the aforementioned impugned order dated 12.08.2015 of the Hon'ble SAT, however, PACL Ltd. and its promoters/directors did not refund the money to the investors. Accordingly, SEBI initiated recovery proceedings under Section 28A of the SEBI Act, 1992 against PACL Ltd. and its promoters/ directors vide recovery certificate no. 832 of 2015 drawn on 11.12.2015 and as a consequence thereof, all bank/ demat accounts and folios of mutual funds of PACL Ltd. and its promoters/ directors were attached by the Recovery Officer vide attachment order dated 11.12.2015.
4. During the hearing on the aforesaid civil appeals filed by PACL Ltd. and its directors (*Civil Appeal No. 13301 of 2015 – Subrata Bhattacharya Vs. SEBI and other connected matters*), the Hon'ble Court vide its order dated 02.02.2016 directed SEBI to constitute a committee under the Chairmanship of Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India (hereinafter referred to as "the Committee") for disposing of the land purchased by PACL Ltd. so that the sale proceeds can be paid to the investors, who have invested their funds in PACL Ltd. for purchase of the land. In the said civil appeals, the Hon'ble Supreme Court did not grant any stay on the orders passed by SEBI and the Hon'ble SAT. Therefore, directions for refund and direction regarding restraint on the PACL Ltd and its promoters and directors from disposing, alienating or selling the assets of PACL Ltd., as given in the order, continues till date.



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5. The Committee has from time to time requested the authorities for registration and revenue of different states to take necessary steps and issue necessary directions to Land Revenue Officers and Sub-registrar offices, to not effect registration /mutation /sale /transfer, etc. of properties wherein PACL Ltd. and/ or its group or its associates have, in any manner, right of interest.
6. Also, the Hon'ble Supreme Court vide its order dated 25.07.2016 restrained PACL Ltd. and/ or its Directors/Promoters/agents/employees/Group and/or associate companies from, in any manner, selling/transferring/alienating any of the properties wherein PACL Ltd. has, in any manner, a right/interest situated either within or outside India.
7. In the recovery proceedings mentioned in para 3 above, the Recovery Officer issued an attachment order dated 07.09.2016 against 640 associate companies of PACL Ltd. In the said order, *inter alia*, the registration authorities of all States and Union Territories were requested not to act upon any documents purporting to be dealing with transfer of properties by PACL Ltd. and / or the group/ associate entities of PACL Ltd. mentioned in the Annexure to the said attachment order, if presented for registration.
8. The Hon'ble Supreme Court, vide its order dated 15.11.2017, passed in Civil Appeal No. 13301/2015 and connected matters directed that all the grievances/ objections pertaining to the properties of PACL Ltd. would be taken up by Mr. R.S. Virk, Retired District Judge.
9. On 30.04.2019, in the recovery proceedings initiated against PACL Ltd. and Ors, the Recovery Officer issued a notice of attachment in respect of 25 front companies of

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PACL Ltd. Thereafter, on 01.03.2021, the Recovery Officer issued another notice of attachment in respect of 32 associate companies of PACL Ltd., which included 25 front companies of PACL Ltd. whose accounts were attached vide order dated 30.04.2019.

10. Vide order dated 08.08.2024 passed in *Civil Appeal No. 13301 of 2015 - Subrata Bhattacharya Vs. SEBI and other connected matters*, the Hon'ble Supreme Court has directed as under:

“.....10. Since, we had directed in our order dated 25.07.2024, that no fresh applications or objections shall be filed before or entertained by Shri R.S. Virk, District Judge (Retd.) and that the same shall be filed before the Committee, the Committee may deal with such applications/ objections, if filed before it, and dispose them of as per the provisions contained under Section-28(A) of the SEBI Act.....”

11. In compliance with the aforesaid order dated 08.08.2024 passed by the Hon'ble Supreme Court, all objections with respect to properties of PACL Ltd, which were pending before Shri R.S. Virk, Retired District Judge and all new objections, are now to be dealt by the Recovery Officer attached to the Committee.

Present Objection:

12. The instant objection has been filed by Mr. Amar Deep Bhupathy S/o Mr. Bhupathy Raja residing at Plot No.1, Yasin Enclave, Rameswaram Highway, Silaiman Bypass, Silaiman, Madurai, Tamil Nadu - 625201 (hereinafter referred to as the “**Objector**”) objecting the attachment of property i.e. farmland at survey No. 178/4 admeasuring 2.02.5 hectares (5 acres) situated in *Pappanam Village, Kariapatti Taluk, Virudhunagar District, Tamil Nadu* (hereinafter referred to as the “**impugned property**”), due to

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attachment of property covered in MR No. 34271-16, which stands attached by the Committee.

13. The Objector in his objection petition has submitted that he had purchased the impugned property from M/s Greenergy Tamil Nadu Co. Private Limited via registered Sale Deed No. 415/2019 dated February 21, 2019 after conducting proper due diligence. He has submitted the Encumbrance Certificate (EC) for the impugned property, Patta no. 1020 in his name and bank statement in support of his claim to the title of the impugned property along with his objection.
14. It is submitted that M/s Greenergy Tamil Nadu Co. Private Limited had acquired the impugned property vide registered Sale Deed No. 2313/2006 dated October 03, 2006 from one Mr. R. S. Velusamy S/o Mr. Sithama Reddiar, through his power agent Mr. Periyasamy Thevar under registered General Power of Attorney (GPA) No. 492/2006 dated September 15, 2006 for a total consideration of Rs.3,00,000/-. Prior to the execution of abovementioned Sale Deed, Mr. R. S. Velusamy had executed a GPA No. 124/31-03-2005 dated March 31, 2005 with Mr. Tarlochan Singh and Agreement to Sell (ATS) dated February 28, 2004 with PACL India Limited. It is the case of the objector that the said GPA being without consideration, is not enforceable and that the ATS cannot by itself transfer any title in the impugned property.
15. In view of the same, the Objector has filed the present objection seeking removal of the impugned property from the list of properties attached by the PACL Committee and issuance of No Objection Certificate (NoC).

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16. The Objector was provided an opportunity of hearing on March 25, 2025 and the same was availed by the Objector by attending it virtually via WebEx. The Objector reiterated the submissions made by him in his objection petition and further, stated that the purported GPA executed by Mr. R. S. Velusamy in favour of Mr. Tarlochan Singh is without any consideration and therefore, cannot be enforceable in law. Also, it was submitted that the ATS dated February 28, 2004 executed between Mr. R. S. Velusamy and PACL India Ltd. was executed one year before the execution of the GPA and that the ATS is an unregistered document which cannot by itself transfer any title in the impugned property. Considering that while making submissions during the hearing, the reply filed by PACL Ltd. to the notice issued by Justice (Retd.) R.S. Virk was referred by the Objector, he was advised to forward the same for perusal, which was forwarded by him vide email dated March 25, 2025 and has been taken on record.

17. On perusal of the sale deed dated February 21, 2019, it is noted that the Objector had purchased the impugned property having Survey No. 178/4 comprising of 5 Acres of dry land situated in the Virudhunagar Registration District within the Kariapatti Sun-registration District, Pappanam Village from M/s Greenergy Tamil Nadu Co. Private Limited (*Vendor Company*) for consideration of Rs. 3,00,000/- paid vide Demand Draft No. 502079 issued by ICICI Bank, Madurai Munichalai Branch in favour of the Vendor Company. It is noted that the said sale deed was registered at SRO, Kariyapatti. Further, the said impugned property was sold to the Vendor Company i.e. M/s Greenergy Tamil Nadu Co. Private Limited by one Mr. R.S. Velusamy S/o Sithama Reddiar through a power agent i.e. Mr. Periyasamy Thevar (registered GPA No. 492/2006 dated September 15, 2006) vide registered sale deed no. 2313/2006 dated October 03, 2006. It is noted that an entry showing transfer of the impugned property from the Vendor



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Company through an agent namely Mr. Gopinath to the Objector vide document no. 415/2019 dated February 21, 2019 for Rs. 3,00,000/- is also found in the EC records. Further, from the bank account summary provided by the objector for ICICI Bank dated February 21, 2019, it is noted that there is an entry dated February 19, 2019 stating "DD/CC issued – Multiple" for Rs. 6,34,037.28/- which upon clarification during hearing, has been clarified by the objector that two DD's were issued by the Bank on that date, including DD for Rs. 3,00,000/- in favour of M/s Greenergy Tamil Nadu Co. Private Limited.

18. In order to examine the title of the property, the documents seized under MR No. 34271-16 were perused. Under the said MR No. two documents are seized. One document is a GPA dated March 31, 2005 entered into by Mr. R. S. Velusamy s/o R. Sithama Reddiar in favour of Mr. Tarlochan Singh s/o Shri Sadhu Singh residing at Bhojemajra Village & Post, Ropar Taluk and District, Punjab state with respect to the land admeasuring 5 Acres comprised in Survey No. 178/4 situated at Pappnam Village, Kariapatti Taluk, Virudhunagar District. The said GPA bearing no. 124/31-03-2005 appears to be registered in Book 4/124/05 in SRO, Kovilpatti.

19. Another document seized under the aforesaid MR No. is an ATS bearing No. 14693 dated February 28, 2004. It is observed that the said agreement is an unregistered document entered into between Mr. R.S. Velusamy s/o R. Sithama Reddiar, as seller and M/s PACL India Limited, as a purchaser company, in respect of the impugned property having survey no. 178/4. Upon further perusal of the recitals of the said ATS, it is noted that the said agreement was entered into for a total sale consideration of Rs. 1,50,800/- and as a token Rs. 40,000/- was paid by the purchaser company i.e. PACL



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India Ltd., by cash, to the seller. The balance consideration of Rs. 1,10,800/- was to be paid to the seller by the purchaser company within one year from the date of execution of the said agreement. It is noted that at the end of the said document a receipt is appended stating receipt of Rs. 1,10,800/- by way of cash from the purchaser company and was executed on March 20, 2004 at Keelgudi Tamil Nadu. However, it is noted that the said receipt is without any signature either of Mr. R. S. Vellusamy (vendor) or any duly authorised representative acting on his behalf. Furthermore, in regard to the ATS executed, it is noted that as per Section 54 of Transfer of Property Act, 1882 (TPA), a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. However, the said ATS being agreement for sale of immovable property, gives right to the parties concerned to seek specific performance of such agreement. Further, in terms of Article 54 of the Schedule to the Limitation Act, 1963, limitation period for seeking specific performance of a contract is 3 years from the date fixed for the performance of the contracts. As can be seen from the recitals of the said ATS and the available receipt, upon payment of the balance consideration of Rs. 1,10,800/- the possession of the scheduled property was required to be delivered to the purchaser company, which as per the receipt appended to the ATS is March 20, 2004. Therefore, suit for seeking specific performance of the Agreement to Sell is now barred by limitation.

20. With respect to acquisition of title through unregistered ATS dated February 28, 2004, reference may also be made to *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656*, wherein, *inter alia*, Hon'ble Supreme Court held as under:



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“24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

21. In view of the law laid down by the Hon'ble Supreme Court in *Suraj Lamp's case* (*supra*), unregistered ATS does not convey any title in the immovable property covered thereunder, in favour of the purchaser. Regarding the applicability of Section 53A of TPA in the present case, it is noted that after the amendments made to Section 53A on 24.09.2001, unregistered agreement to sell is not protected under Section 53A of TPA. In the present case, the ATS concerned is not registered. Therefore, Section 53A of TPA is not attracted *qua* the said ATS. Moreover, the Objector has stated that he is in possession of the impugned lands. Therefore, there is no question of PACL India Ltd./ PACL Ltd. or its agent/employee being in possession of said land which can be protected under Section 53A of TPA.

22. Now, with respect to the GPA No. 124/31-03-2005, as mentioned in the preceding paragraph No. 18, the said document is noted to be a registered document executed by



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Mr. R. S. Velusammy in favour of Mr. Tarlochan Singh. However, it is submitted by the Objector that the said GPA has been executed without any payment of consideration and therefore, cannot transfer any ownership rights in the impugned property. Further, it is noted that the said document has been executed on March 31, 2005 i.e. around one year after the execution of the ATS dated February 28, 2004 and the receipt of the full and final sale consideration receipt executed on March 20, 2004. Thus, the execution of the said GPA in favour of Mr. Talochan Singh, who is the person in whose names PACL Ltd. used to purchase properties, after one year of executing the ATS for the same impugned property by Mr. R.S. Vellusamy raises serious suspicion on the genuineness of the said documents.

23. Assuming without admitting that the said GPA was a valid document, in order to establish whether the said document created any 'interest' thereby making it irrevocable and hence, legally binding, it is pertinent to firstly understand the basic principles governing the contract of 'agency' as stated under Chapter X of the Indian Contract Act, 1872 and the provisions of the Power of Attorney Act, 1882. It is noted that 'Agency' is a fiduciary relationship between two persons, where one explicitly or implicitly agrees that the other will act on their behalf to influence their legal relations with third parties, and the other similarly agrees to act in this capacity or does so based on an agreement. The relationship between the executant of a general power of attorney and the holder of the power is one of a principal and agent. A principal is bound by the acts done by an agent or the contracts made by him on behalf of the principal. Likewise, power of attorney, in the nature of contract of agency, authorizes the holder to do acts specified by the executant, or represent the executant in dealings with third persons. Section 1A of the Power of Attorney Act, 1882 defines 'Power-of-Attorney' to include



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any instrument empowering a specified person to act for and in the name of the person executing it. The Hon'ble Supreme Court in the case of *Syed Abdul Khader v. Rami Reddy & Ors., reported in (1979) 2 SCC 601* held that the relation between the donor of the power and the donee of the power is one of the principal and agent having its genesis in a contract. It is well settled that power of attorney is a creation of an agency by which the grantor /donor /executant authorizes the grantee /donee /holder /attorney to do the acts specified on his behalf, which will be binding on the executant as if the acts were done by him. Such agency stands determined or terminated in the circumstances mentioned in Section 201 of the Indian Contract Act, 1872. However, if such a GPA creates any 'interest' in favour of the POA holder, then the agency becomes irrevocable by virtue of Section 202 of the Indian Contract Act, 1872, till the continuation or subsistence of such interest.

24. In a recent judgement passed by the Hon'ble Supreme Court in the case of *M. S. Ananthamurthy & Anr Vs. J. Manjula Etc. (Civil Appeal Nos. 3266-3267 of 2025 arising out of SLP (C) Nos. 13618-13619 of 2020) dated 27.02.2025*, the Hon'ble Court, while examining whether from the reading of the GPA involved therein, the holder of the POA had an interest in the subject matter of the agency i.e. the suit property based on which the GPA can be said to be an irrevocable agency created, relied on the decision of the Hon'ble High Court of Delhi in *Shri Harbans Singh Vs. Smt. Shanti Devi reported in 1977 SCC OnLine Del 102* and laid down that the POA, if not coupled with interest, cannot be said to be irrevocable. Thus, the agency has to be specifically meant to secure the agent's benefit or interest and only then will it be said to be an irrevocable POA. The Hon'ble High Court in the case of *Shri Harbans Singh (Supra)* observed as under:

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न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति
Justice (Retd.) R. M. Lodha Committee
(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

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"All the conditions of irrevocability are satisfied in the present case. The authority to the agent was given for valuable consideration which proceeded from the respondent. It was given for the purpose of effectuating a security or protecting or securing the interest of the agent. For, the only purpose of the agency was to ensure and secure the performance of the contract by the appellant in favour of the respondent for whom Shri Gulati was acting as the husband and the nominee and, therefore, a representative or an agent. Where the performance of the agency is not to secure the interest or the benefit of the agent then the agency is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in or lien for advances upon the subject-matter of it."

(Emphasis supplied)

25. From the above, it can be seen that the conditions of irrevocability of a contract of agency can be said to be, (i) authority to agent given for valuable consideration; (ii) such valuable consideration was given for the purpose of effectuating a security or protecting or securing the interest of the agent; (iii) agency not being irrevocable merely because the agent has some interest in carrying it out or holds a special right, such as a lien or advance, over its subject matter. Thus, the agency has to be specifically meant to secure the agent's benefit or interest. Further, the interest of the agent can be inferred from the language of the document or from the course of business between the principal and agent.

26. In the present case, upon perusal of the GPA dated March 31, 2005, executed by Mr. R. S. Velusammy in favour of the POA holder Mr. Tarlochan Singh, it is observed that the GPA did not create any interest but only gave authority to the Donee (POA holder) to sell, mortgage and / or gift the impugned property on behalf of the Donor and the title/ ownership of the impugned property vested with the Donor of the GPA.



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Therefore, the said GPA cannot be said to be irrevocable agency in the light of the judgement by the Hon'ble Supreme Court in the case of *M.S. Ananthamurthy & Anr (Supra)*. Having said that, it is also pertinent to note that even after executing the GPA in favour of Mr. Tarlochan Singh (POA holder) in the year 2005, the POA holder did not act on the same. Also, Mr. R. S. Velusammy by way of executing sale deed in the year 2006, through his power agent Mr. Periyasamy Thevar who was given the power vide another registered GPA, sold the impugned property to M/s Greenergy Tamil Nadu Co. Private Limited for a total consideration of Rs. 1,41,150/-. As stated above, the GPA only authorized the Donee to transfer the property on behalf of the Donor and the impugned property was still under the ownership of the Donor. Thus, considering that the Donor himself subsequently transferred the impugned property by way of executing separate registered sale deed with M/s Greenergy Tamil Nadu Co. Pvt Limited, the said GPA was rendered infructuous as the Donor himself ceased to possess the authority which was given to exercise to the Donee through the GPA.

27. Notwithstanding the same, assuming that the GPA executed by the Donor intended to create interest in favour of the Donee, then also by virtue of the judgement passed by the Hon'ble Supreme Court in the case of *Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana & Anr (2012) 1 SCC 656*, which discouraged the practice of transferring an immovable property by way of executing a GPA / Agreement to sell / Will, it is clear that mere execution of GPA does not convey any title and cannot be said to be a valid mode of transferring any immovable property. In the present case, even though the GPA was executed by the predecessor to the title of the impugned property in favour of the POA holder, the said GPA did not create any ownership right or transfer the title in the impugned property to the POA holder.

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28. In view of the findings in the preceding paragraphs, notwithstanding the execution of GPA No. 124/31-03-2005 in favour of Mr. Tarlochan Singh and ATS No. 14693 with PACL Ltd, Mr. R. S. Velusamy was still having the ownership rights and the title and possession of the impugned property and thus, transferred the ownership in respect of the said property by executing a registered Sale Deed No. 2313/2006 dated October 03, 2006 in favour of M/s Greenergy Tamil Nadu Co. Private Limited through his power agent, Mr. Periyasamy Thevar. Therefore, the further sale of the said property by M/s Greenergy Tamil Nadu Co. Private Limited to the Objector vide Registered Sale Deed No. 415/2019 dated February 21, 2019 was a valid transfer of title.
29. From the foregoing, considering that the sale of impugned property vide registered sale deed dated October 03, 2006 by Mr. R. S. Velusamy was a valid transfer of title, the further sale of impugned property by M/s Greenergy Tamil Nadu Co. Private Limited to the Objector, by executing a registered sale deed dated February 21, 2019, indeed transferred valid title of the impugned property in favour of the Objector.

ORDER:


30. Given all the above, the objection raised by the Objector is liable to be allowed and is accordingly, allowed.

Place: Mumbai

Date: May 07, 2025



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MS. RESHMA GOEL
RECOVERY OFFICER
रेशमा गोयल / RESHMA GOEL
उप महाप्रबंधक एवं वसूली अधिकारी
Deputy General Manager & Recovery Officer
न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति
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(पीएसीएल लि. के मामले से संबंधित, मुंबई / in the Matter of PacL Ltd, Mumbai)

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