



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA 2897/MB-IV/2022**

**In**

**CP (IB) No.1224/MB-IV/2019**

Under Section 30 of IBC, 2016

Mr. Darshan Bharatbhai Patel

Resolution Professional of  
M/s Shop CJ Network Private Limited

.... Applicant

In the matter of:

Adonis Mobitrade Private Limited

...Operational Creditor

V/s

Shop CJ Network Private Limited

...Corporate Debtor

**Order Dated: 21.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant (RP)

:

Mr. Nipun Singhvi i/b  
Mr. Kamil Lokhandwala,  
Advocates.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application being IA No. 2897/MB-IV/2022 filed on 08.10.2022 by Mr. Darshan Bharatbhai Patel, the Applicant/Resolution Professional ("RP" or "Applicant"), under

Section 30 (6) r/w Section 31 of IBC, 2016 (the Code). This Application seeks approval of the Resolution Plan filed by Besto Trademark Limited, for the Corporate Debtor, Shop CJ Network Private Limited (hereinafter called as the “Corporate Debtor”), which was approved by 100% vote of Committee of Creditors (“CoC”) vide voting results dated 01.10.2022 consequent to meeting of even date and was further amended by 100% vote of CoC vide voting results dated 06.10.2022 consequent to the CoC meeting of even date.

2. The brief submissions on behalf of the Applicant is as under:

2.1 Vide order dated 19.01.2022, this Tribunal admitted the Company Petition No. 1224 of 2019 filed by the Financial Creditor and appointed the Mr. Sanjay Shrivastava as the Interim Resolution Professional (“IRP”) in the matter. Subsequently the Applicant was appointed as the Resolution Professional vide order dated 01.04.2022 in IA No. 757 of 2022 filed by sole CoC member of the Corporate Debtor.

2.2 Pursuant to the admission order of this Tribunal, the erstwhile IRP had issued a Public Announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, thereby inviting Claims of the Creditors of the Corporate Debtor.

2.3 The COC consists of the following members:

1.	Centre for Economic and Social Inclusion Private limited (Financial	100%
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	Creditor)	
2.	Opulence Global Purveying Private Limited (Operational Creditor having more than 10% of aggregate claim)	-
3.	Spectacular Media Marketing Private Limited (Operational Creditor having more than 10% of aggregate claim)	-

- 2.4 Applicant had prepared and published Invitation for Expression of Interest in FORM G of the Corporate Debtor and invited Resolution Plans pursuant to the said CIRP process.
- 2.5 The Applicant in the 3<sup>rd</sup> CoC Meeting had appointed one Forensic Auditor being M/s S L Gupta and Associates in May 2022 for inquiring into the past transactions of the Corporate Debtor by giving detailed scope of work. The Forensic Auditor accordingly had conducted its Audit and marked specific transaction of the Corporate Debtor as avoidable transactions as per Section 45 of the IB Code. Consequent to this Resolution Professional made its crimination 61 days beyond the 105th day of the Insolvency Commencement Date.
- 2.6 In 4<sup>th</sup> CoC meeting dated 21.06.2022, the Applicant presented the updated Claim register as had received further claims from the Creditors of the Corporate Debtor and claims were rejected by the Applicant on the ground of delay which was condoned by this Tribunal vide order dated 26.08.2022. Thereafter, the

Applicant again rejected the claim vide communication dated 17.09.2022. Aggrieved by this rejection the claimant has filed an IA No. 3772 of 2022 praying for admission of claim of Rs.1,27,87,284/-.

- 2.7 The Application for extension of 90 days was filed by the Applicant and the same was allowed by this Tribunal on 08.08.2022 extending CIRP period upto 16.10.2022.
- 2.8 In the 5<sup>th</sup> CoC Meeting held on 14.07.2022, the CoC rejected the plan submitted by one of the Prospective Resolution Applicants namely, Sheth Capital Services Private Limited because of non-compliance of the provisions of Section 30(2) of the Code holding that Trading in Shares or Financial Assets are not Trading Activities.
- 2.9 In 7<sup>th</sup> CoC meeting dated 01.10.2022, the Applicant informed that out of two eligible Prospective Resolution Applicant (“PRA”) only one PRA i.e. M/s Besto Tradelink Limited (RA) has submitted the Resolution Plan despite two reminders. Accordingly, the applicant presented only one Resolution Plan submitted by the said PRA and told CoC that he has informed CoC on 20.09.2022 about the compliance of Section 30(2) of the Code. The Resolution Plan was discussed in details in presence of CoC member, Operational Creditors having more than 10% of the admitted claims, Suspended Board and Resolution Applicant who was also invited to present and discuss.

- 2.10 The Applicant apprised the CoC about the latest Judgement of the Hon'ble Supreme Court dated 06.09.2022 in the matter of *Rainbow Papers Limited* and further discussed on the findings including treatment of Government Dues as Secured Creditors and verdict of Hon'ble Apex Court that, the Committee of Creditors, which might include Financial Institutions and other Financial Creditors, cannot secure their own dues at the cost of Statutory Dues owed to any Government or Governmental Authority or for that matter, any other dues.
- 2.11 In the 7<sup>th</sup> CoC meeting, Resolution Applicant (representative Mr. Rakesh Lahoti) presented the brief terms of Resolution Plan and every participant appreciated the fact that, the Admitted Claim of Government Department has been paid in FULL along with the admitted claim of Operational Creditors as on date of submission of the said plan. The RA also briefed that the priority of payment to Operational Creditors is also ensured. He also discussed that all the claim of Government Dues, Operational Creditors and Financial Creditors is to be paid within 25 days of date of Approval Resolution Plan by this Tribunal.
- 2.12 The Resolution Applicant on 04.10.2022 intimated the Applicant regarding the name change in the proposed Shareholders of the Resolution Applicant in the event of approval of Resolution Plan by this Tribunal. The Resolution Applicant intimated that the requested change is for better execution of the plan and infact the net worth of proposed new Shareholders is higher as compared to the old proposed

Shareholder. The Resolution Applicant also filed CA Certified net worth Certificate of the new Proposed Shareholders, whose combined net worth was higher as compared to M/s L7 Hitech Private Limited (old proposed Shareholder).

2.13 The Applicant conducted 8<sup>th</sup> CoC meeting on 06.10.2022 wherein such request of the Resolution Applicant was thoroughly discussed along with any negative impact on the implementation of Resolution Plan. The CoC resolved to allow change in one of Shareholder of the Resolution Applicant and instructed the Applicant to file the application for approval of Resolution Plan before the Adjudicating Authority at the earliest.

2.14 The summary of average valuation figures reported by the Independent Valuers is as under:

<b>Particulars</b>	<b>Fair Value</b>	<b>Liquidation Value</b>
Land and Building	NA	NA
Plant and Machinery	1,66,052	1,21,914
Financial Assets and Securities	14,66,89,007	3,33,42,313
<b>TOTAL</b>	<b>14,68,55,059</b>	<b>3,34,64,227</b>

2.15 The Applicant submitted that the Resolution Applicant has also agreed to advance Performance Bank Guarantee as per regulations for approval of Resolution Plan of the entire amount of the Resolution Plan (excluding EMD amount) for effective implementation of the Resolution Plan within 15 days from approval of CoC.

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- 2.16 The Applicant also submits that the Resolution Plan contemplates the concessions, relief and dispensation sought under Part 13 of the Resolution Plan. It further reflects in the Resolution Plan that Resolution Applicant shall have exclusive rights upon the previous Income Tax Losses, GST credits (if any), refunds from VAT department (if any), Licenses and consents of the Corporate Debtor along with other assets of the Corporate Debtor upon approval of the Resolution Plan.
- 2.17 With respect to avoidance transactions pending before this Tribunal, Resolution Applicant at Para 7.13.17 Resolution Plan has proposed that if any recovery takes place before the NCLT approval date, it will go solely to the benefit of Resolution Applicant.
- 2.18 The monitoring committee will comprise of total 3 members, which will consist of one member Nominated by CoC; one member Nominated by Resolution Applicant and the Resolution Professional himself, who shall also be the chairperson of Monitoring Committee.
3. The Applicant submitted that the Compliance Certificate in revised Form - H under Regulation 39(4) of the Regulations showing the compliances of the Plan as mandatorily required under the Code and Regulations and that the Plan had been approved by the CoC. Revised Form H was filed to incorporate the modification in distribution of resolution plan amount consequent to query raised by this Bench. He has also certified therein that:

- i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- ii. The Resolution Applicant BESTO TRADELINK LIMITED has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- iv. The voting was held on 01.10.2022 wherein all the members of the CoC were present.
- 3.1 The Plan provides for payment of following amounts to the Stakeholders -

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided	Amount to be Provided
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(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	5.12	5.12	5.12	100%
		Total[(a) + (b)]	5.12	5.12	5.12	
	Secured Operational Creditors	Operational creditors- VAT Bangalore	74.60	11.23	11.23	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	0	0	0	0
		Total[(a) + (b)]	0	0	0	0
3	Operational	(a) Related Party	0	0	0	0

	Creditors	of Corporate Debtor				
		(b) Other than (a) above:				
		(i)Government	214.17	214.17	214.17	100%
		(ii)Workmen	0	0	0	0
		(iii)Employees	0	0	0	0
		(iv)Operational Creditors Others	1825.02	958.33	569.48	47.42%
		Total[(a) + (b)]	2039.19	1172.50	783.65	
	Grand Total		6884.07	1188.85	800.00	

3.2 The Plan provides for 100% cancellation of existing shares.

3.3 The applicant has further submitted in Form H that –

- a. The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor;
- b. The Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority;
- c. The Resolution Applicant has submitted an affidavit stating that it is eligible;
- d. The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code;
- e. The resolution applicant has the capability to implement the resolution plan;



- f. The Resolution Plan provides for:
- i. payment of insolvency resolution process costs,
  - ii. the payment to the operational creditors,
  - iii. the payment to the financial creditors who did not vote in favour of the resolution plan,
  - iv. the management of the affairs of the corporate debtor,
  - v. the implementation and supervision of the resolution plan.
- g. The Resolution Plan does not contravene any of the provisions of the law for the time being in force;
- h. The Resolution Plan is feasible and viable, according to the CoC and approved by 100% vote; and
- i. The Resolution Plan deals with interest of all the Stakeholders.

3.4 The Resolution Plan is not subject to any contingency.

3.5 The Resolution Plan is being filed 8 days before the expiry of the period of CIRP provided in section 12 of the Code.

3.6 The CoC has also approved contribution required under regulation 39B and sale of Corporate Debtor as a going concern under regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

3.7 In view of aforesaid facts and statements in Form H, the Applicant has prayed that:

3.7.1 This Hon'ble Adjudicating Authority may be pleased to approve the Resolution Plan submitted by M/s Besto Tradelink Limited the successful Resolution Applicant and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all other stakeholders involved in the Resolution Plan;

3.7.2 This Hon'ble Adjudicating Authority may be pleased to pass such other and further order in the facts and circumstances of the present case.

4. We have heard the Counsel and perused the material available on records.

4.1 During the course of hearing the Learned Counsel for the Applicant was asked to clarify on payment of statutory dues, which has been considered as contingent on account of pendency of appeal and mode of distribution of further recovery amounts. The Applicant has filed an Affidavit dated 20.01.2023 stating that disputed claims of Government Authorities, which were earlier taken at Notional Value of Rs.1/- each, have been considered again in the light of decision of Apex Court in Rainbow Papers and in accordance thereto amount of Rs.11,23,941/- and

Rs.2,14,17,122/- has been set aside from the contingency fund for payment to Deputy Commissioner of Commercial Tax (Audit) Bangalore and Principal Commissioner of CGST and C. Excise, Mumbai South. As regards disputed demand of Rs.18,41,92,933/- raised by department of GST, Government of Maharashtra, no claims have been filed by such Department, hence, no sum is payable to the Department in the absence of claim as required under amended provision of Regulation 12 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 as applicable from 04.07.2018. It is also submitted as regards claim of one of Operational Creditor pending before this Tribunal under IA No. 3772 of 2022, the same shall be treated as per Resolution Plan under category of Operational Creditor in case it is allowed by this Bench. Further, the claim of another Operational Creditor filed on 11.11.2022 is not maintainable as the same has been filed after filing of present Application.

- 4.2 In view of the discussions and the law, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. Therefore, the present application deserves to be allowed.

**ORDER**

5. The Application IA 2897/MB-IV/2022 in CP (IB) No.1224/MB-IV/2019 is allowed. It shall become effective from this date and shall form part of this order.

5.1 It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

5.2 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

5.3 In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, "on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan."

*"95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any*

*State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

- 5.4 In view of the above judgement, the applicant is entitled to waivers/ concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.
- 5.5 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- 5.6 The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

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- 5.7 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- 5.8 The Applicant shall take into effect the decision in IA No. 3772 of 2022 to determine the amount payable to Operational Creditors.
- 5.9 The Application i.e. IA No. 2880 of 2022 in relation to Avoidance Transaction under section 45 of Code, pending before this Adjudicating Authority, shall be pursued by the Resolution Professional and the amounts recovered under such application, after appropriation of cost(s) incurred in pursuing the application and recovery of amounts thereunder, shall be distributed amongst the unpaid Creditors of the Corporate Debtor in accordance with provisions of Section 53 of the Code.
- 5.10 With the above directions, IA No. 2897/MB-IV/2022 filed by Mr. Darshan Bharatbhai Patel, the Applicant/Resolution Professional, under Section 30 (6) r/w Section 31 of IBC, 2016, is hereby Allowed.

Sd/-  
Prabhat Kumar  
Member (Technical)  
21.03.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)