

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 4TH
)
JUSTICE CONWAY) DAY OF NOVEMBER, 2020

BETWEEN

ISABELLE ROBERTS

Applicant

and

BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as
SHAWN YUAN) and THE REGIONAL MUNICIPALITY OF DURHAM

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Link & Associates Inc. (“**Link**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the undertaking, property and assets of (collectively, the “**Property**”) of Besnovo Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and PengYuan Holding Limited (the “**PengYuan**”) dated October 25, 2020 and appended to the Second Report of the Receiver dated October 26, 2020 (the “**Report**”), and vesting in PengYuan’s nominee, 12450828 Canada Inc. (the “**Purchaser**”), the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the

“**Purchased Assets**”), was heard this day via Zoom judicial conference due to the COVID-19 pandemic.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the PengYuan, the Purchaser and Xing Yuan, counsel for Cleeve Holdings Inc., Cleeve Technology Inc. and Paul Church, and counsel for Isabelle Roberts, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Paula Hoosain sworn October 26, 2020, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), but excluding any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 12, 2020, and, for greater

certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the "**OBCA**"), the Receiver be and is hereby authorized and directed, upon filing of the Receiver's Certificate, to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of the Debtor to 2325208 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of Debtor, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Debtor's past and current employees, including personal information of those employees offered employment by the Purchaser. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

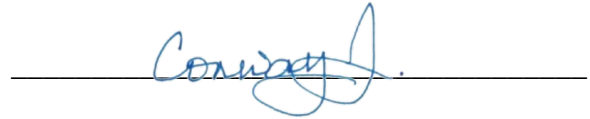
8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Conway J.".

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-18-607866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ISABELLE ROBERTS

Applicant

and

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC. PENGYUAN
HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as
SHAWN YUAN) and THE REGIONAL MUNICIPALITY OF DURHAM**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated March 12, 2020, Link & Associates Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Besnovo Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated November 4, 2020, the Court approved the asset purchase agreement dated October 23, 2020 (the “**Sale Agreement**”) between the Receiver and PengYuan Holding Limited (“**PengYuan**”) and provided for the vesting in PengYuan’s nominee, 12450828 Canada Inc. (the “**Purchaser**”), of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**LINK & ASSOCIATES INC., in its capacity
as Receiver of the undertaking, property and
assets of BESNOVO INC., and not in its
personal capacity**

Per: _____

Robert Link, CIRP, LIT

ISABELLE ROBERTS

- and - **BESNOVO INC. et al.**

Applicant

Respondents

Court File No. CV-18-607866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER
(returnable November 4, 2020)**

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Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc.