

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V**

(IB) 2753 (ND)/2019

In the matter of:

**K.K. Infonet System,
TIN No. 274505376142
Row House, Plot No. 31,
Sector-5, Ghansoli,
Navi Mumbai-400701**

.....Operational Creditor

V/s

**Cloudric Technologies Pvt. Ltd.
CIN No. U72900DL2014PTC266728
A-10/28B, Kalkaji Extn.,
New Delhi-110019**

.....Corporate Debtor

SECTION: U/S 9 of IBC, 2016

Order delivered on: 02.02.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Petitioner: Mr. Praveen Mahajan, Ms. Ruchi

For the Respondent:

ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

1. The Applicant/Operational Creditor is filing the present application against the Respondent/Corporate Debtor under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 6 of the IBC, 2016 initiate corporate insolvency resolution process in respect of Corporate Debtor.
2. K K. Infonet System (hereinafter referred to as "Operational Creditor") is a partnership firm, having TIN No. 274505346142, inter alia engaged in the business of Electrical, BTS Installation, RF Cabling Work, Dismantling and Installation, IDU, ODU Dismantle works, IBS Installation & dismantle and Jio sharing site installation and having its registered office at Row House, Plot No. 31, Sector No. 5, Ghansoli, Navi Mumbai-400 701.
3. Cloudric Technologies Private Limited (hereinafter referred to as "Corporate Debtor") having CIN No. U72900DL2014PTC266728 is a company duly incorporated under the Companies Act, 1956 and is engaged in the business of providing solutions, services and products covering wide spectrum of telecommunication and providing mobile data services in India.
4. As per the averments, the Corporate Debtor had approached the Operational Creditor for the aforesaid services (hereinafter referred to



as "said services"). In view of the above the Corporate Debtor executed a Service Provider Agreement with the operational creditor (hereinafter referred to as "said Agreement"). In lieu of the said agreement, the Corporate Debtor approached the operational creditor and as per the requirement raised by the Corporate Debtor the Operational Creditor provided the said services against the purchase order no. CTPL/17-18/11 dated 23.05.2017 and the same was accepted by the Corporate Debtor without any protest or demur. The Operational Creditor provided the said services to the full satisfaction of the Corporate Debtor on earnest believe and understanding that payment in respect of said services shall be made by the Corporate Debtor company on respective due dates. Against the supply of said services the Operational Creditor duly raised 2 invoices (hereinafter referred to as "said Invoices") as mentioned herein below of total amounting Rs. 6,43,570/- which were duly acknowledged by the Corporate Debtor without any protest or demure .

- Invoice No. KKIS-171814 dated 01.10.2017 for amount of Rs. 5,20,570/-
- Invoice No. KKIS-17815 dated 01.10.2017 for amount of Rs. 1,23,000/-

5. It was submitted by the Operational Creditor that the said invoices were raised against the services provided by the Operational Creditor and which were duly acknowledged by the Corporate Debtor and the Corporate Debtor assured to clear all its outstanding amounts within



due time, but the Corporate Debtor failed to make the payments against the invoices despite of their assurance except making the part payment of Rs. 1,00,000/- on 22.01.2018 as duly reflected in ledger accounts maintained in books of accounts of the Operational Creditor.

6. In view of the books of accounts maintained by Operational Creditor in the ordinary course of business, the total amount payable by the Corporate Debtor is Rs. 5,43,570.00/- which is still due and outstanding. It was further submitted that the Corporate Debtor, in order to pay the outstanding due in part, issued a cheque bearing no. 020543 (hereinafter referred to as "said Cheque") for Rs. 1,20,915/- dated 15.11.2017 drawn upon ICICI Bank, Faridabad Branch, towards the part payment of dues. However, the aforesaid cheque upon presenting for encashment was dishonoured vide returning memo dated 12.12.2018 on the grounds of "Funds Insufficient". The said debt is still in default, which is evident from the ledger account of the Corporate Debtor company as maintained in the books of account of the Operational Creditor in ordinary course of business. The said amount remains unpaid by the Corporate Debtor till date and the same is undisputed between the parties.
7. The cause of action arose on 01.10.2017, when the Operational Creditor has duly provided the said services to the Corporate Debtor and have raised the last invoice against the service provided, which were duly acknowledged by the Corporate Debtor without any protest and demur. The cause of action further arose on 12.12.2018, when the



Operational Creditor received the returning memo stating that the said cheque was dishonoured for the reason "Funds Insufficient". The cause of action is continuing in nature as the Corporate Debtor till date has not paid the said amount to the Operational Creditor and is illegally sitting over the same and in view of same the debt of the Operational Creditor is well within limitation.

8. It was submitted that an amount of Rs. 5,43,5708/- along with interest @ 18 per cent per annum from due date till the date of actual realization is outstanding against the services provided and invoices raised by the Operational Creditor which were duly acknowledged by the Corporate Debtor. The demand vide notice dated 11.06.2019 under Form 3 of IBC was issued by claiming the principal amount with interest calculated at the rate of 18 per cent per annum from the date of respective invoices till the date of demand notice.
9. We have heard the Ld. Counsel for the Operational Creditor and perused the averments made in the application as well as the documents enclosed with the application. Ld. Counsel for the Operational Creditor submitted that although the notice was delivered upon the Corporate Debtor but none appeared on behalf of the Corporate Debtor and therefore, vide order dated 12.12.2019, the Corporate Debtor was proceeded ex-parte and the case was fixed for ex-parte hearing against the Corporate Debtor. He further submitted that even after the delivery of Demand Notice, neither any reply was received from the Corporate Debtor nor any payment was made by the



respondent. In view of Section 8 (2) of the Code, the Corporate Debtor is required to raise a dispute or make payment within 10 days after the receipt of the Demand Notice. Since, the Corporate Debtor neither raised the disputes nor made payment and the defaulted amount is more than Rs. 1,00,000/- is being the minimum threshold limit fixed under IBC, 2016, hence under such circumstances this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent.

10. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Further:

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

11. The Operational Creditor has not proposed the name of any IRP.

Accordingly, we appoint Mr. Anil Kumar Jain, an Insolvency



Professional, registration no. IBBI/IPA-001/IP-P00735/2017-2018/11233 email- aniljn@yahoo.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

12. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
13. Copy of the order be sent to both the parties as well as to the IRP.
14. To come up on for further consideration.

SD/-

K. K. VOHRA
Member (T)

SD/-
03.03/2020

ABNI RANJAN KUMAR SINHA
Member (J)