

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 09.09.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 143/BB/2020	For pronouncement of orders	Sec 9 of I&B code 2016	Ctrl S Datacenters Ltd	P Vikram, Krishma	Afore-cybersec Technology Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

Ms. KRISHMA - Advocate

ADVOCATE FOR RESPONDENT/s:

ORDER

CP (IB) No. 143/BB/2020 is disposed of by separate order.


MEMBER (T)


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.143/BB/2020
U/s. 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

M/s. Ctrl S Datacenters Limited
R/o. at Ground Floor,
Pioneer Towers,
Plot No.16, Software Units Layout,
Madhapur,
Hyderabad – 500 081 - Petitioner/Operational Creditor

And

M/s. Aforecybersec Technology Private Limited
M/s. Guru Developers and Investments Pvt. Ltd.
No.5, Ground Floor, 13th Main,
Vasanth Naar,
Bengaluru – 560 052 - Respondent/Corporate Debtor

Date of Order: 09th September, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioner : Ms. Krishma

For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.143/BB/2020 is filed by M/s. Ctrl S Datacenters Limited ('Petitioner/Operational Creditor), U/s. 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.



Aforecybersec Technology Private Limited (Respondent/ Corporate Debtor) on the ground that it has committed default for total amount of Rs.17,84,527/- (Rupees Seventeen Lakhs Eighty Four Thousand Five Hundred and Twenty Seven only) which includes principal amount and interest @ 18% p.a., is the total due amount as on 20.02.2019.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:
 - (1) M/s. Ctrl S Datacenters Limited (herein after referred to as "Petitioner/Operational Creditor") was incorporated on 18.10.2007, under the Companies Act, 1956 with CIN: U72200AP2007PLC056007. The Company is engaged in the business of providing data storage and data protection solutions including buying, marketing, selling, re-selling etc.
 - (2) M/s. Aforecybersec Technology Private Limited (herein after referred to as "Respondent/Corporate Debtor"), is a Private Limited Company, was incorporated on 29.03.2017, under the provisions of the Companies Act, 2013, bearing CIN: U72501KA2017PTC101826. Its Authorized Share Capital of Rs.4,00,000/- and that of Paid-Up Capital is Rs.1,00,000/-. It is engaged in the business of maintenance and repair of office, accounting and computing machinery.
 - (3) The Operational Creditor has supplied collocation and dedicated servers for broadband services to the Corporate Debtor, under which various invoices were raised on various dates. As per the terms and conditions contained in the said invoices, a sum total of Rs.15,12,311/- was to be paid by the Corporate Debtor. The Corporate Debtor received services of the Operational Creditor without any objections or demur and the Operational Creditor had requested the Corporate Debtor several times vide emails dated 24.01.2019, 13.02.2019, 20.02.2019 and 12.03.2019 to pay the outstanding amount.

The Corporate Debtor addressed an email dated 24.01.2019 accepting an acknowledging the liability towards the Operational Creditor and agreed to pay part amount of Rs.10 lakhs before 31.01.2019 and the balance complete payment before 10.02.2019. But till date the Corporate Debtor have not made payments with respect to said Debt amount. After many requests and reminders, left with no option, the Operational Creditor has issued Demand Notice dated 20.08.2019, U/s.8 of the IBC, 2016 for initiation of the CIRP against the Corporate Debtor and no reply to the said Demand Notice received by the Corporate Debtor.

- (4) Hence, the instant Petition seeking to initiate CIRP against the Corporate Debtor.
3. Heard Ms. Krishma, learned Counsel for the Petitioner, **through Video Conference** and none appeared for the Respondent. We have carefully perused the pleadings of the Party and extant provisions of the Code, the Rules made thereunder and the law on the issue.
4. The case was initially listed for admission on 16.06.2020, and as none appears for the Petitioner, it adjourned to 19.06.2020 when notice was ordered to the Respondent. The Registry is also directed to send notices to the Respondent and its MD. Accordingly, the Registry sent notices by Speed post to the Respondent, and it's MD. However, those envelopes returned with an endorsement that no such addressee was available at the addressed place. However, the Learned Counsel for the Petitioner submit that they have sent email to the Respondent. Even as per the correspondence filed by the Petitioner, the last email communication received from the Respondent is only 24th January, 2019, wherein the Respondent committed to pay the outstanding amount by 10th February, 2020. And thereafter, only the Petitioner used to send emails to the Respondent. Even the Demand Notice dated 20.08.2019 did not elicit any response from the Respondent and not known whether the



Demand notice was received by them. The Petitioner could not succeed to effect personal service on the Respondent till date so as to consider the case for admission.

5. Unlike in Civil Suits, Adjudicating Authority cannot pass exparte order of admission or decree, as action involved in the case is to initiate CIRP on justified grounds, subject to satisfaction of it. So far as merits for admission of case is concerned, cause of action started in the year 2017, when purchase orders started to be issued by the Respondent. Terms and conditions with reference to payment mentioned in purchase orders are Payment to be made three months in advance, delivery should be made in 10 days from PO date and payment; contract is for a period of 36 months. However, the Petitioner, though the Respondent not making payment in terms of purchase orders, used to render the service in question. Even though, the Respondent stated to have committed to clear the outstanding amount by end of February, 2019 by email dated 24th January, 2019 and failed to do so, the Petitioner did no initiate any legal course of action to recover the outstanding amount till Demand notice dated 20.08.2019, in question, issued under the provisions of Code. The Provisions of Code is not basically meant for recovery of outstanding amount.
6. In the above circumstances, the Adjudicating Authority cannot initiate CIRP as prayed for, in the absence of conclusive proof available on record that the Respondent is in receipt of at least a notice of this case. Principles of natural justice demands that unless opposite party is in knowledge of the case, no Court/Tribunal is justified to take into cognizance of a case. Therefore, instead of keeping the matter pending on the file of the Tribunal, for service of notices, reply etc., it would be just and proper to dispose of the instant Company Petition by granting liberty to the Petitioner to file fresh Company Petition in accordance with law, after tracing correct address of Respondent and service of notices etc. on it.



7. In the result, **C.P. (IB) No.143/BB/2020** is hereby disposed of by granting liberty to the Petitioner to file fresh Company Petition, in accordance with law, after tracing out correct address of the Respondent and serving copy of case. The Registry is directed to return copies of CP along with material papers to the Petitioner.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

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