

**Court No. 33-2675435**

**Estate No. 33-2675435**

**IN THE MATTER OF THE BANKRUPTCY OF  
KODACLOUD CANADA INC.**

**TRUSTEE'S REPORT TO THE CREDITORS ON PRELIMINARY ADMINISTRATION**

**BACKGROUND**

KodaCloud Canada Inc. (the "**Company**") was a wholly owned Canadian subsidiary of KodaCloud Inc. (the "**Parent**"), a company based in Santa Clara, California which operated as a provider of internet cloud service WIFI powered by artificial intelligence. The Company primarily provided R&D services to the Parent and operated from leased premises at its registered head office located at 310-515 Legget Drive, Ottawa, Ontario.

The Trustee understands that on July 11, 2019, the Parent made an Assignment for the Benefit of Creditors ("**ABC**") in the state of California, following unsuccessful marketing of the business for sale or investment. Subsequent to the ABC, a transaction was concluded to sell the assets of the Parent, excluding the shares of the Company.

The Trustee further understands that the Company was effectively wound down and employees were terminated prior to the commencement of the ABC, and that the Company's employees were paid any and all wages, vacation, and termination & severance upon termination.

Based on the Company's books and records, it was a secured guarantor for various promissory notes owed by the Parent. KodaCloud (assignment for the benefit of creditors) LLC (the "**Assignee**") has advised the Trustee that there is a shortfall in the distribution to the secured noteholders of the Parent.

Unable to meet its obligations, the Company made an assignment in bankruptcy under section 49(1) of the Bankruptcy and Insolvency Act (Canada) (the "**BIA**") on September 28, 2020.

On September 29, 2020, Notice of the First Meeting of Creditors, a list of creditors with claims in excess of \$25, proof of claim forms and proxy voting letters were sent to all known creditors of KodaCloud Canada Inc. and on October 1, 2020, a notice of the bankruptcy and the first meeting of creditors was published in the National Post.

The activities of the Trustee since its appointment have primarily consisted of statutory work in accordance with the provisions of the BIA.

## **CAUSES OF BANKRUPTCY**

As noted above, the Company was a wholly owned subsidiary of the Parent, which filed an ABC in July 2019. Based on the Company's books and records, its assets were insufficient to cover its liabilities, including in its capacity as secured guarantor under secured obligations of the Parent, unpaid pursuant to the ABC. As a result, the Company made an assignment in bankruptcy under the BIA on September 28<sup>th</sup>, 2020.

## **FINANCIAL POSITION/ASSETS**

### **Cash**

At the filing date, the only assets of the estate related to its SR&ED (Scientific Research and Experimental Development) tax credit refund in the amount of \$331,950.82. The Trustee has deposited these amounts in a segregated bank account for the estate.

## **BOOKS AND RECORDS OF THE BANKRUPT**

The books and records of the Company reside with the Assignee pursuant to the ABC. The Trustee has received the Company information required thus far in the administration, and the Assignee has agreed to maintain of books and records of the Company until further communication with the Trustee.

## **SECURED CREDITORS**

The Company's Statement of Affairs indicates that there are 6 secured creditors with claims totalling \$4,418,369.91. Based on information provided by the Assignee this represents the remaining unpaid amounts owing by the Parent and for which the Company is a secured guarantor.

The Trustee has instructed its independent legal counsel, Aird & Berlis LLP to undertake a security review to verify its validity and enforceability.

## **SECURITY FOR UNPAID WAGES S.81.3 CLAIMS**

The Trustee is given to understand that there are no employees with unpaid wages per s.81.3 of the BIA. We understand that all employees were terminated by the Company on or before July 11, 2019 and all outstanding obligations were paid.

## PREFERRED CREDITORS

The Company's Statement of Affairs indicates that there were no known preferred creditors as at the date of bankruptcy.

## UNSECURED CREDITORS

The Company's Statement of Affairs indicates that there are 11 unsecured creditors with claims totalling \$5,317,453.07.

## PROVABLE CLAIMS

As at 9am EST/ 6am PT on Friday October 9<sup>th</sup>, 2020, the Trustee has recorded Proof of Claims from two creditors, as follows:

Summary of Claims						
\$ CAD	Note	Claims Filed		Proxies in Favour of		
		(#)	Amount	Trustee	Amount	
Secured	1	1	2,103,938.32	Nil		Nil
Unsecured	1	1	2,207,471.62	Nil		Nil
<b>Total</b>		<b>2</b>	<b>4,311,409.94</b>	<b>Nil</b>		<b>Nil</b>

*Note 1: Valid proof of claims have been received from one creditor, comprising a secured and unsecured element to their claim. The above table treats these as being separate.*

## PREFERENCE PAYMENTS AND TRANSACTIONS AT AN UNDERVALUE

Pursuant to sections 95(1) of the BIA, the Trustee is obligated to review transactions concluded at arm's length in the three month period before the date of bankruptcy and where deemed not at arm's length, in the 12 month period before the date of bankruptcy to assess whether one or a group of creditors were given a preference.

Furthermore, pursuant to section 96(1) of the BIA, the Trustee is obligated to review transactions concluded in the 12-month period before the date of bankruptcy for transactions at an undervalue.

In this case, as the last transaction made per the Company's book and records took place on August 31, 2019, there have been no transactions within the reviewable period set out in the BIA. As such, the Trustee has taken no investigative action to date in these proceedings.

## **TRUSTEE'S FEES**

The Trustee's fees will be based on time costs incurred, and costs (including independent legal counsel) as incurred. No security or indemnification has been provided to the Trustee.

## **OTHER**

Further information related to the bankruptcy proceedings may be obtained from KPMG's website at <https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/kodacloud-canada.html>

Dated at Toronto, Ontario this 9th day of October, 2020

KPMG Inc.,  
in its capacity as Trustee of the Estate of  
KodaCloud Canada Inc.  
and not in its personal capacity

Per: *Katherine Forbes*  
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Katherine Forbes  
Senior Vice-President