



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-2(c)

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*Proposed Counsel to the Debtors and
Debtors-in-Possession*

In re:

Cloudeeva, Inc.,¹

Debtors.

Chapter 11
Case No. 14-24874 (KCF)
(Joint Administration Requested)

**FINAL ORDER APPROVING FACTORING AGREEMENT AND AUTHORIZING
DEBTOR TO OBTAIN FINANCING FROM PRESTIGE CAPITAL CORPORATION**

The relief set forth on the following pages, numbered 2 through 9, is hereby
ORDERED.

DATED: 8/20/2014

Honorable Kathryn C. Ferguson
United States Bankruptcy Judge

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Cloudeeva, Inc., a Delaware Corporation (5326) and Cloudeeva, Inc., a Florida Corporation (2227). Cloudeeva, Inc., a Delaware Corporation's corporate headquarters are located at 104 Windsor Center Drive, Suite 300, East Windsor, New Jersey 08520.



Page: 2

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

This matter having come before the court on the motion (the "Motion") of Cloudeeva, Inc. (Delaware) (hereafter "**Debtor**"), by and through Lowenstein Sandler LLP, counsel for Debtor, for authorization to obtain post-petition financing pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 4001 and 6004, and the court having read and considered the papers presented, and good cause further appearing

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

A. On or about March 13, 2014, the Debtor and Prestige Capital Corporation (hereinafter "**Prestige**") entered into that certain Purchase and Sale Agreement (the "**Factoring Agreement**"), attached as **Exhibit D** to the Motion and, in accordance with the Factoring Agreement, Prestige purchased certain accounts receivable from the Debtor.

B. The Factoring Agreement, among other things, granted Prestige a security interest in the collateral described in paragraph 11 of the Factoring Agreement (the "**Pre-Petition Collateral**") to secure the Debtor's performance under the Factoring Agreement and, Prestige cause to be filed a UCC-1 financing statement, perfecting its security interest in the Pre-Petition Collateral which includes, but is not limited to, the Debtor's interest in all pre-petition accounts receivable, inventory, machinery and equipment, instruments, documents, chattel paper and general intangibles.

C. Pursuant to that pre-petition relationship, Prestige asserts that the Debtor owes Prestige for charge backs, fees, and other costs as of the petition date, subject to specification,

Page: 3

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

in the approximate amount of \$150,000 (the "**Pre-Petition Obligation**"), which sum Prestige alleges is properly secured by a valid, perfected and enforceable first priority security interest in the Pre-Petition Collateral.

THEREFORE, IT IS ORDERED, DETERMINED AND ADJUDGED:

1. The Debtor filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code on July 21, 2014 and has continued to operate and manage its business and property since that date as a Debtor-in-Possession, pursuant to Sections 1107-1108 of the Bankruptcy Code.

2. Prestige, upon the terms and conditions more fully set forth in the proposed Purchase and Sale Agreement ("**Proposed Factoring Agreement**") annexed to the Motion as **Exhibit A**, is willing to provide the Debtor with post-petition financing through the purchase of open and eligible accounts receivable in accordance with the terms and provisions of the Proposed Factoring Agreement, so to enable Debtor to continue to operate its business.

3. The Debtor requires this post-petition financing in order to continue to operate its business, and the Debtor has been unable to obtain unsecured credit or to obtain secured credit on any basis other than that offered by Prestige. Unless the post-petition financing offered by Prestige is obtained, the Debtor will be unable to operate its business, to preserve its assets, or otherwise to protect the interests of its creditors.

4. The provisions of the Proposed Factoring Agreement are therefore fully ratified and confirmed, including but not limited to those provisions concerning the granting of a security interest and the control and direction of payments on the Debtor's accounts receivable.

Page: 4

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

The Debtor is further authorized to take such actions and execute such documents as may be necessary fully to implement the provisions set forth in the Agreement.

5. The obligations which the Debtor will incur to Prestige for advances made pursuant to the Proposed Factoring Agreement, as authorized by this Order, shall be valid, post-petition obligations of the Debtor, and all of the said obligations shall be secured obligations, in accordance with 11 U.S.C. § 364(c)(2), by valid, perfected, and enforceable first priority security interests in and liens on all of the Debtor's interest in: (i) the types of collateral that constitute the Collateral that the Debtor has acquired post-petition, together with all proceeds and profits arising there from (the "**Post-Petition Collateral**"); and (ii) the Pre-Petition Collateral. In addition, the Pre-Petition Obligation shall be secured by a first priority security interest and lien on the Post-Petition Collateral.

6. In consideration of the accommodations made available pursuant to this Order and the Proposed Factoring Agreement, the Debtor irrevocably waives the right, without Prestige's prior written consent, to grant or impose, or request that any Court grant or impose, under § 364 of the Code or otherwise:

- i. Liens or security interests on any property which constitutes Prestige's pre or post-petition collateral; and
- ii. Seek authority to use cash collateral, as defined in § 363(a) of the Code, out of the proceeds of Prestige's pre or post-petition collateral.

Page: 5

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

7. The automatic stay of § 362(a) of the Code is hereby modified to the extent necessary to permit:

- i. Prestige to seek and receive payment directly from the account debtor making payment on an invoice that has been purchased by Prestige (regardless of whether the invoice was purchased or created before or after the Debtor commenced its Chapter 11 proceeding);
- ii. Prestige, in its sole discretion, to file any financing statement or other instruments and documents, if any, evidencing its security interest and liens on the Pre-Petition Collateral and Post-Petition Collateral;
- iii. the Debtor to pay, and Prestige to charge, any costs, fees, and expenses, including without limitation, filing and recording fees, commitment fees, origination fees, processing fees, financing fees, and reasonable legal fees and expenses, accruing under the Proposed Factoring Agreement (regardless of whether such fees are derived from invoices that were purchased or created before or after the date the Debtor commenced its Chapter 11 case); and
- iv. Prestige to exercise all of its rights and remedies under the Bankruptcy Code, Article 9 of the UCC or otherwise in the event of a default or termination under the Agreement including, without limitation, all rights and remedies of a secured creditor. No party in interest will have the right to contest the enforcement of this Paragraph based on any assertion that Prestige's interest in the Pre-Petition

Page: 6

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

Collateral and Post-Petition Collateral is adequately protected or on any other ground, and no interested party will have the right to seek injunctive relief against the enforcement of, or in conflict with, the provisions of this Order or the Agreement.

8. The security interests granted Prestige under the Agreement and approved by this Order are further hereby declared to be effective, valid and perfected as of the date of this Order, without the necessity of filing by any person of any documents or other instruments required to be filed under applicable non-bankruptcy law and such perfection shall be binding upon any subsequently appointed trustee, either in a Chapter 11, or under any other Chapter of the Bankruptcy Code, and upon any and all other creditors of the Debtor who have or may hereafter extend credit to the Debtor or file a claim of whatever nature, in this or any subsequent bankruptcy case of the Debtor.

9. Nothing herein shall diminish or detract in any way from the rights that are or may be possessed by Debtor, due to the filing of financing statements prior to the filing of the Voluntary Petition herein, or otherwise due to the operation of applicable non-bankruptcy law.

10. In the event that Prestige files an unsecured claim in the above-captioned proceeding for any portion of the Debtor's obligations under the above-described pre and post-petition financing, such claims shall have, pursuant to Bankruptcy Code section 364 (c) (1) the priority of an expense of administration in the Debtor's bankruptcy case, under sections 503(b) and 507 (a) (1) of the Bankruptcy Code. Said priority shall be senior to any other

Page: 7

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

administrative expenses in Debtor's bankruptcy case of the kind specified in sections 503 (b) of the Bankruptcy Code and will at all times be senior to the rights of the Debtor, except as to the fees of the United States Trustee pursuant to 28 U.S.C. §1930(a) and to professionals retained by the Debtors and the Unsecured Creditors Committee (the "Committee") if appointed. No cost or expenses of administration that have been or may be incurred in this case, and no priority claims are or will be prior to or on a parity, except as provided above, with any claim of Prestige against the Debtor arising out of advances made by Prestige to the Debtor in connection with the sale of the accounts receivable, and no cost or expenses of administration will be imposed upon Prestige, its claims, or the Collateral and Post-Petition Collateral pursuant to § 506(c) of the Code or otherwise.

11. The Court has considered and determined the matters addressed in this Order pursuant to its power under §§ 363(b) and 364(c) and (d) of the Code to authorize the Debtor to execute and perform under the Proposed Factoring Agreement and to grant certain security interests and liens to Prestige, and thus, each of such terms and conditions, as part of an authorization under such sections, is subject to the protections contained in §§ 363(m) and 364(e) of the Bankruptcy Code.

12. Notwithstanding anything in the Proposed Factoring Agreement to the contrary, the Bankruptcy Court retains jurisdiction over any and all matters arising under or in connection with this financing between the Debtor and Prestige and this Order including, without limitation, all actions commenced by Prestige against the Debtor.

Page: 8

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

13. To the extent there is any inconsistency between the terms of the Motion, Factoring Agreement, and Proposed Factoring Agreement the terms of this Order will govern.

14. The Debtor hereby acknowledges that the liens and security interests granted to Prestige pursuant to and in connection with the Proposed Factoring Agreement (including, without limitation, all security agreements, pledge agreements, deeds of trust and other security documents executed by the Debtor in favor of Prestige) are: (i) valid, binding, perfected, enforceable, liens and security interests in Collateral described in the Proposed Factoring Agreement (collectively with the documents delivered therewith), (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

15. The Debtor hereby acknowledges that the terms and conditions of the Proposed Factoring Agreement constitute valid and binding obligations, enforceable against the Debtor in accordance with its terms. No obligation, payment, transfer or grant of security of, by and/or between Prestige and/or the Debtor under the Proposed Factoring Agreement or this Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code, under section 548 of the Bankruptcy Code or under any applicable State Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

Page: 9

Debtors: Cloudeeva, Inc., *et al.*

Case No.: 14-

Caption: Final Order Approving Factoring Agreement and Authorizing Debtor to Obtain Financing from Prestige Capital Corporation

16. Notwithstanding the foregoing, nothing herein shall limit the Committee appointed in the Debtor's case, if any, to challenge the extent, validity or enforceability of the liens acknowledged by the Debtor herein.

17. The requirement set forth in Local Rule 9013-2 that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.