

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.802/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

Shiv Lalit Barter Private Limited,(CIN U51909WB1995PTC074980) having its registered office at 57/ 15 Ballygunge Circular Road, Kolkata 700019.

... Operational Creditor

Versus

In the matter of:

Dev R Nil Design Private Limited, (CIN: U74900WB2014PTC204686) having its Registered office at 42P, Raja Santosh Road, Kolkata-700027

...Corporate Debtor

Date of hearing : 15/02/2022

Order Pronounced on :22/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Rishav Banerjee, Adv.] For Operational Creditor
2. Mr.Ashis Kumar Mukherjee,Adv.
3. Mr.Saurabh Prasad, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by Shiv Lalit Barter Pvt. Ltd., a corporate entity, through its Director namely Mr. Sanjay Kumar Bajoria, authorised vide Board Resolution dated 30.04.2019 (Annexure- B) (hereinafter referred to as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of Dev R Nil Design Private Limited, **(CIN: U74900 WB2014PTC204686)**, having its Registered office at 42P, Raja Santosh Road, Kolkata-700027, (hereinafter referred as the Corporate Debtor).
3. It is submitted by the Operational Creditor in its petition that on January 22, 2015, an Agreement of Lease was executed between Mrs. Jaishree Bajoria, and Dev R Nil Design Private Limited, the Corporate Debtor, being the Lessor and Lessee respectively, in respect of all that space measuring about 6000 sq. ft. at premises no. 42P, Raja Santosh Road, Kolkata-700027 (hereinafter referred to as “the Demised Premises”), for a period of three years from January 1,2015 to December 31,2017 with an option to further renew the lease for a period of three years as per the various terms and conditions mentioned in the agreement.
4. It was agreed between the parties that the Corporate Debtor would pay to the Lessor a monthly rent of Rs.30,000/- inclusive of Municipal Taxes and surcharge thereon on or before the 10 of each month subject to deduction of TDS with a 10% enhancement of rent for the renewed

period of another three years after the expiry of the first term of lease of three years. It is further submitted that the parties agreed that the Corporate Debtor shall further pay a sum of Rs.1,20,000/- per month to the persons nominated by the Lessor during the subsistence of lease period of three years with a 10% increase during the renewed period of another three years after the expiry of the first term of lease of three years as "Amenities Charges", including building maintenance etc. provided in the premises. It was further agreed that the persons nominated by the Lessor shall provide the Corporate Debtor with proper bills and receipts for payment made by the Corporate Debtor towards Amenities Charges. It is submitted that thereafter the Lessor nominated the Operational Creditor for providing amenities and services of sanitation and water supply to the Corporate Debtor. Similarly, the Lessor also appointed one Daulat Sales Agencies Private Limited to provide security services, one Natraj Enclave Private Limited to services of repairs and maintenance and Panihati Steels Pvt. Ltd. for electrical maintenance services. It is submitted that the Corporate Debtor had to pay a monthly sum of Rs.30,000/- towards rent to the Lessor, Rs. 30,000/- to the Operational Creditor for services of sanitation and water supply, Rs. 30,000/- to Daulat Sales Agencies Private Limited for security services, Rs.30,000/- to Natraj Enclave Private Limited for repairs and maintenance and Rs.30,000/- to Panihati Steels Private Limited for electrical maintenance services.

5. It is submitted that from the very inception of the said agreement, the Corporate Debtor failed to make timely payment of rent and amenities/ services charges and has also failed to deposit TDS. As such, the Operational Creditor along with others were forced to issue several Notices/ Letters dated June 23, 2015, July 16, 2016, August 01, 2016, September 26,2016, December 06,2016, August 02,2017, October 14, 2017, November 01, 2017, April 23, 2018, June 09, 2018, June 23, 2018 and April 25, 2019 seeking timely payment of rent and amenities/ services charges and TDS amount. It is submitted that though the

Corporate Debtor has been paying the bills of amenities/ services of sanitation and water supply to the Operational Creditor after deducting TDS as per the Income Tax Act,1961 but it has not issued the TDS certificate to the Operational Creditor from April 15, to December, 2017 and has not deposited the TDS so deducted with the government as per law.

6. It is further submitted that the Operational Creditor had to issue Notice dated June 23, 2018 to the Corporate Debtor, demanding payment of TDS amount not deposited along with interest and penalty demanded by the Income Tax Department for such a lapse. It is submitted that on expiry of the said agreement of lease by efflux of time on December 31,2017, a fresh agreement of lease dated March 12,2018 was executed by and between the said Lessor and the Corporate Debtor, whereby the Lessor had leased out to the Corporate Debtor a total area of about 6800 sq.ft. situated in the premises mentioned therein, for a period of three years with effect from 1st January, 2018 to December 31, 2020 at a monthly rental of Rs.33,000/- inclusive of Municipal Taxes and Surcharge, payable on or before the 10th of each month, subject to deduction of TDS. It is submitted that as per the said agreement, the Corporate Debtor further agreed to pay a sum of Rs.1,32,000/- per month during the subsistence of the said lease period of three years to the nominated persons of Lessor including the Operational Creditor as amenities charges towards building, repair work, electrical, sanitation maintenance and for other amenities provided in the Premises. As such, the Corporate Debtor was liable to pay a total sum of Rs.1,65,000/- per month to the Lessor and her nominated persons including the Operational Creditor and in case of any delay in payment of rent and amenities, the Corporate Debtor had agreed to pay interest @ 2% per month over and above the same.

7. It is submitted that pursuant to the said agreement, the Lessor nominated four companies i.e. Shiv Lalit Barter Pvt. Ltd., the

Operational Creditor, one Daulat Sales Agencies Private Limited, one Natraj Enclave Pvt. Ltd. and one Panihati Steels Pvt. Ltd. to provide the amenities and raise monthly bills for such amenities charges upon the Corporate Debtor. As such, the Corporate Debtor is required to pay a sum of Rs.33,000/- for rent to the Lessor, Rs.33,000/- to the Operational Creditor for services of sanitation and water supply, Rs.33,000/- to M/s Daulat Sales Agencies Private Limited for security services, Rs.33,000/- to M/s Natraj Enclave Private Limited for services of repairs and maintenance and Rs.33,000/- to M/s Panihati Sales Pvt. Ltd. for electrical maintenance services.

8. It is submitted that the Operational Creditor and others have issued notices to the Corporate Debtor demanding payment of interest for delayed payment of rent and amenities charges for the period up to December, 2017 under the earlier Lease Agreement dated January 22, 2015. Furthermore, the Operational Creditor and others have also raised demand for payment of interest for the delayed payment of rent and amenities charges for the period from January, 2018 up to February, 2019 under the Deed of Lease dated March 12, 2018. It is submitted that there is no dispute with respect to the quality and price of the services rendered by the Operational Creditor to the Corporate Debtor and as such the operational debt is not disputed by the Corporate Debtor. It is further submitted that the Operational Creditor has duly raised bills and invoices for services charges rendered for providing sanitation and water supply for each and every month which were duly received by the Corporate Debtor. However, despite receipt of the said invoices on account of services rendered, the Corporate Debtor has failed and neglected to pay the amenities charges amount on and from June 01,2018. The Operational Creditor has also raised interest bills dated March 31,2018 and April 30,2018 for delayed payment of amenities charges. It is submitted that an aggregate sum of Rs.4,38,271/- is due and outstanding and payable by the Corporate Debtor to the Operational Creditor as on March 31, 2019.

9. It is submitted that the Operational Creditor vide letter dated 12th March, 2018, Smt. Jaishree Bajoria, Lessor had informed the Corporate Debtor M/s Dev R Nil Designs Private Limited, informing and conveying to the Corporate Debtor that as per the terms of lease dated 12th March, 2018, they would pay lease rent amount of Rs.33,000/- per month to her i.e. Lessor with effect from 1st January, 2018, for which the bills up to March, 2018 were enclosed therewith. It was conveyed that as per the Clause II (j) of the said Lease Agreement, they would directly pay the following Amenity Charges to the following parties for the services rendered by them to their company every month with effect from 1st January, 2018. The relevant extract of the said letter is reproduced as under:-

“ M/s Dev R Nil Designs Private Limited dated 12th March,2018
42P, Raja Santosh Road,
Kolkata-700027

Kind Attn: Mr. Navonil Das-Director

Dear Sir,

Sub:- **My Space at Premises No. Nos. 42N, 42P, 42V, 42W, 42X and 42Y, Raja Santosh Road, Kolkata-700027**

This is to inform you that as per terms of our Deed of Lease dated 12th March, 2018, you shall pay Lease Rent Amount of Rs.33,000/- (Rupees Thirty Three Thousand only) per month to me w.e.f. 1st January, 2018 for which the bills upto March, 2018 are sent enclosed.

Kindly note that as per Clause II(j) of the said Lease Agreement, you shall directly pay the following Amenity Charges to the following parties for the services rendered by them to your Company every month w.e.f. 1st January, 2018:-

Sl.	Name	Address	Amount(Rs)	Service Provided
1.	Panihati Steels Pvt. Ltd.	59, Ballygunge Circular Road, Kolkata-700019	33,000.00	Electrical & maintenance services
2	Natraj Enclave Pvt. Ltd.	42, Raja Santosh Road, Kolkata - 700027	33,000.00	Repair & Maintenance Services
3	Shiv Lalit Barter Pvt. Ltd.	57/15, Ballygunge Circular Road, Kolkata-700019	33,000.00	Sanitation & Water Supply Services.
4	Daulat Sales Agencies P.Ltd	57/15, Ballygunge	33,000.00	Security Services

		Circular Road, Kolkata-700019		
		TOTAL	1,32,000/-	

Kindly confirm and oblige
Thanking You,
Yours faithfully,

We confirm the payment per month of the aforesaid
Service Charges from January, 2018 for the entire period
of the Lease As per Lease Agreement dated 12th March,
2018 and their appointment letters

JAISHREE BAJORIA

For Dev R NiL Designs Private Limited

**(NAVONIL DAS)
DIRECTOR”**

10. The Corporate Director through its Director Mr. Navonil Das confirmed that the payment per month of the aforesaid service charges from January, 2018 would be made for the entire period of the lease as per the lease agreement dated 12th March, 2018 would be made and their appointment letters. It is submitted that the Shiv Lalit Barter Private Limited, i.e. Operational Creditor was issuing invoices directly in the name of the Corporate Debtor.
11. It is submitted that an aggregate sum of Rs.4,38,271/- is due and outstanding and payable by the Corporate Debtor to the Operational Creditor, as per the following details;
- (i) March 31, 2019 which include unpaid amenities charges from June, 2018 to March ,2019 i.e. Rs. 3,30,000/-,
 - (ii) TDS not deposited from April, 2015, to December 2017 which is paid by the Operational Creditor –Rs. 19,800/-
 - (iii) Income Tax Demand for interest and penalty which is paid by the Operational Creditor of Rs. 2,549/-
 - (iv) Interest for delayed payments of Amenities Charges Rs. 85,922/- which totals ups to Rs.4,38,271/-
12. It is submitted that this operational debt is due from June, 2018. The

Operational Creditor has also claimed interest @ 2% per month from April 1, 2019 onwards.

13. It is submitted that Operational Creditor issued Demand Notice in Form-3 under Section 8 of the Code to the Corporate Debtor demanding the aforesaid sum of Rs.4,38,271/- along with interest and detailed therein all the relevant facts. The said notice was duly delivered to the Corporate Debtor. The Operational Creditor has also annexed with the petition a copy of the Bank Statement of the Operational Creditor to indicate that no payment of the outstanding amount has been received by the Operational Creditor from the Corporate Debtor.
14. The Operational Creditor has also submitted that the Corporate Debtor had sent a sum of Rs. 30,000/- on 1st April, 2016 to the Operational Creditor through the Bank.
15. It is submitted that pursuant to notice dated 3rd May, 2019, which was duly delivered to the Corporate Debtor on 10th May 2019, the Corporate Debtor has not sent any reply. It is further submitted by the Operational Creditor that there is no contemporaneous dispute ever raised by the Corporate Debtor to the Operational Creditor after receipt of bills/invoices for services/amenities provided by the Operational Creditor. It is submitted that there is no prior or pending litigation or any order of the Court over the issue forming the subject matter of the present claim.
16. ***On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.***
17. **In reply** to the petition, the Corporate Debtor through its Director submitted that Corporate Debtor on 22nd January, 2015 entered into an agreement of Lease executed and signed by and between Mrs. Jaishree Bajoria, and Dev R Nil Design Private Limited, the Corporate Debtor,

being the Lessor and Lessee respectively therein, in respect of all that space measuring about 6000 sq. ft. at premises No. 42P, Raja Santosh Road, Kolkata-700027, (hereinafter referred to as the “ Said Premises”) for a consideration of Rs.30,000/- per month as lease rent. The said lease agreement is for three years commencing from 1st January, 2015 to 31st December, 2017.

18. It is submitted that after successful completion of the said tenure of lease agreement as per terms of renewal on March 22, 2018, a fresh agreement for lease of the said premises was entered into by and between Mrs. Jaishree Bajoria, and Dev R Nil Design Private Limited, the Corporate Debtor, being the Lessor and Lessee respectively for the consideration of Rs.33,000/- per month as lease rent.
19. It is submitted that in both the agreements for lease dated 1st January, 2015 and 12th March, 2018 particularly in Clause II(J) a provision was there for payment of amenities charges primarily for Rs.1,30,000/- and thereafter, for the existing agreement for lease amounting to Rs.1,32,000/- per month to the nominated persons and/or companies specifically towards services of repair and maintenance of the building.
20. It is submitted that thereafter, from the notice dated 12th March, 2018 issued by the Lessor, the CD came to know that for providing service of sanitation and water supply of the lease hold property, the Corporate Debtor has to pay Rs. 30,000/- to the Operational Creditor.
21. It is needless to mention that the only source of water supply in the demised premises is the water supplied by the Panihati Municipality and since initiation of the business there from the Corporate Debtor by their own persuasion repaired the entire building and installed water pipes, taps, from underground reservoir upto overhead tank and inside the lease hold premises, bathroom, toilet, privy as well as maintained sanitation of the entire building through their men and agents as per their need in the said lease hold premises. After completion of such

installation works said contractors raised their respective bills and the said bills were duly considered with by the Corporate Debtor.

22. It is submitted that the lease hold premises is a dilapidated structure and the services of sanitation and water supply works are on regular basis maintained by the Corporate Debtor through their appointed contractor is well known to the operational creditor.
23. It is submitted that moreover, on different occasions the said facts of providing services of sanitation and water supply of lease hold premises were informed to the landlady Mrs. Jaishree Bajoria who is one of the Directors of the Operational Creditor but no positive outcome came from her till date.
24. In view of the aforesaid facts, it is evident that no such services mentioned in the notice dated 12th March, 2018 was ever provided by the Operational Creditor to the Corporate Debtor. In view thereof the Operational Creditor is not entitled to get the said sum of Rs.4,38,271/- as well as the Corporate Debtor does not owe any debt to the Operational Creditor.
25. It is denied by the Corporate Debtor that the Operational Creditor has ever rendered any services to the Corporate Debtor as alleged or the Operational debt due and owing to the Operational Creditor on account of rendering services as alleged or at all. Corporate Debtor has already stated in preceding paragraphs that since taking over possession of the lease hold premises, till date, the Operational Creditor never ever rendered any kind of service towards the Corporate Debtor. Moreover, in the entire application not a single document is annexed by the Operational Creditor disclosing providing of any such services in respect of sanitation and water supply of the lease hold property. It is submitted that although the persons nominated by the Lessor shall provide bills for payments made by the Corporate Debtor towards amenities charges but in the present case amenities related to sanitation and water supply of

the lease hold structure were not at all provided by the Operational Creditor for the entire lease period. Moreover, no contract was ever entered into by the Operational Creditor with the Corporate Debtor for enabling the Corporate Debtor about the specification of work field of rendering services by the Operational Creditor towards them. In that view of the matter and in view of day to day functioning of the business from the lease hold premises the Corporate Debtor, out of their own funds till date maintained such works. It is stated that only raising bills does not entitle the Operational Creditor to get Rs. 30,000/- per month from the Corporate Debtor.

26. It is denied by the Corporate Debtor that from the very inception of the agreement for lease the Corporate Debtor failed to make timely payment of rent and other amenities/service charges as alleged or the Corporate Debtor failed to deposit TDS as alleged or the Corporate Debtor has failed to deposit TDS certificate as alleged or at all. It is submitted that the Operational Creditor admitted that the Corporate Debtor has to pay a monthly sum of Rs.30,000/- to the Operational Creditor for services of sanitation and water supply but in the entire petition the Operational Creditor did not annex a single scrap of document showing they have done any sort of sanitation and water supply in the demised premises. Admittedly the Operational Creditor did not annex a single document claiming money for the works done in the said demised premises within the lease tenure. In that view, simply raising of monthly bills and claiming services charges without showing any rendering of service does not and cannot be treated to be a debt under the ambit of Section 3(11) of the Insolvency and Bankruptcy Code, 2016. Moreover, any adhoc sum if at all paid by the Corporate Debtor to the Operational Creditor during the lease tenure that has to be returned by the Operational Creditor due to non-rendering of any service against that. The Corporate Debtor will take appropriate step against the Operational Creditor on such score.
27. It is denied by the Corporate Debtor that the Corporate Debtor was liable
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to pay a sum of totaling Rs.1,65,000/- per month to the lessor and her nominated persons including the Operational Creditor as alleged or the Corporate Debtor is required to pay a sum of Rs.33,000/- to the Operational Creditor for services of sanitation and water supply as alleged or at all.

28. It is denied by the Corporate Debtor that there is no dispute with respect to the quality and /or price of the services rendered by the Operational Creditor to the Corporate Debtor as alleged or the operational debt is not disputed by the Corporate Debtor as alleged or Operational Creditor has duly raised bills/invoices for service charges rendered for providing sanitation and water supply for each and every month which were also received by the Corporate Debtor as alleged or despite receipt of the said invoices on account of services rendered the Corporate Debtor has failed and neglected to pay the amenities charges amount on and from June 1, 2018 as alleged or Rs. 4,38,271/- outstanding payable to the Corporate Debtor as on March 31, 2019 as alleged or at all.
29. It is submitted that for the entire lease tenure the Operational Creditor did not provide a single service. Admittedly, the Operational Creditor did not annex a single document claiming money for the works done in the said demised premises within the lease tenure. In that view simple raising of monthly bills and claiming services charges without showing any rendering of service does not and cannot be treated to be a debt under the ambit of Section 3(11) of the Insolvency and Bankruptcy Code, 2016. It is also denied that such debt of Rs.4,38,271/- is due from June 1, 2018 as alleged or the claim of Operational Creditor in respect of said bills/invoices is valid as alleged or genuine as alleged or live claim as alleged or the debt is continuing till date as alleged or at all.
30. It is submitted that Operational Creditor with his mala fide intention by setting on motion this Adjudicating Authority tried their level best to squeeze money from the Corporate Debtor to the tune of Rs.4,38,271/-

for the services not at all rendered by them to the Corporate Debtor and on that score the application be dismissed with exemplary cost.

31. Operational Creditor in its **Rejoinder** affidavit submitted that it is a settled proposition of law as laid down by the Hon'ble Supreme Court in the case of **Mobilox Innovations Pvt.Ltd. Vs. Kirusa Software Pvt. Ltd.** that a Corporate Debtor must reply to the statutory notice issued to the Corporate Debtor under section 8 of the Code and it is mandatory on the part of the Corporate Debtor to reply to the statutory notice of demand issued by the Operational Creditor and raise dispute to the claims made by the Operational Creditor. It is submitted that in the present case, the Corporate Debtor has failed to reply to the statutory notice of demand by the Operational Creditor, which proves that there is no pre existing dispute between the Operational Creditor and the Corporate Debtor. It is submitted that since Corporate Debtor did not respond to any of the demand notices/letters, it would explicitly show admission of liability and /or debt on the part of the Corporate Debtor. The Corporate Debtor has not annexed a single document or letter to show that the Corporate Debtor had ever raised any dispute of not receiving services and therefore, the defence of the Corporate Debtor is an afterthought and is just a moonshine. The Corporate Debtor has annexed purported ledger copies of Biswanath Ghoshal-salary for the period 30th April, 2017 to 30th April, 2019 along with purported vouchers all paid to the one Biswanath Ghoshal. The accounts shows "housekeeping and sweeper" has been added subsequently. All these vouchers show account head as salary of worker or casual worker and there is no narration in the body of the vouchers. Similarly, Corporate Debtor has also annexed purported ledger copies of **Arun Dhanuak-salary** for the period 30th September, 2016 to 15th October, 2018 along with purported payment instructions to bank or bank advices or vouchers for the period of 13.09.2017 to 15.08. 2018 and all paid to Arun Dhanuak towards employee's salary. All these details have been given by the Corporate Debtor in support of

its frivolous defence that the Corporate Debtor has availed the services of these persons. The Corporate Debtor seems to have forged and fabricated the vouchers as would be evident from the vouchers that they have no narration about nature of payment on its body.

32. It is submitted that Mrs. Jaishree Bajoria is the absolute owner of the leased premises and has admittedly the entered into lease agreement with the Corporate Debtor for payment of lease rental and for payment of amenities charges to four different companies as mentioned in the petition.
33. It is submitted that the Operational Creditor constructed underwater reservoir, installed overheads tank and pipelines, erected toilets and all others water and sanitation infrastructure to meet the requirement of the Corporate Debtor at the inception of the admitted lease from January, 2015 and the Corporate Debtor had agreed to pay consolidated rental and service charges of Rs.1,50,000/- per month from January, 2015 to December 2017 and subsequently admittedly increased the same to Rs.1,65,000/- per month from January, 2018, out of which the rental due to Mrs. Jaishree Bajoria is Rs. 33,000.- per month.
34. It is submitted that the Corporate Debtor has admittedly paid such amenities charges for services to the Operational Creditor from January, 2015 to May, 2018 and thereafter defaulted in making the payment.
35. It is submitted that the Corporate Debtor has repeatedly acknowledged the liability towards payment of the amenities charges to the Operational Creditor. It is submitted that in C.P. No. 792/2019, the Corporate Debtor had admitted its liability towards payment of amenities charges to the Operational Creditor. In fact, the Corporate Debtor had admittedly factored in charges as rent in its own ledger, which will be evident from the affidavit in reply filed by the Corporate Debtor in C.P.No.792/2019 (Annexure-A). It is submitted that the defence taken by the Corporate

Debtor is merely an afterthought, which is further evident from the fact that the Corporate Debtor itself requested the Landlady Mrs. Jaishree Bajoria to give a consent letter to the Bank and by an email dated 7th March, 2016, requested her for the said consent letter to be forwarded to the Banker of the Corporate Debtor for sanction of certain loan facilities to the Corporate Debtor. Accordingly, Mrs. Jaishree Bajoria for herself and on behalf of the Operational Creditor duly gave a letter to the Bankers of the Corporate Debtor, by letter dated 7th March, 2016 allowing the bank official to enter into the leased premises for inspection purposes. It is submitted that Mrs. Jaishree Bajoria, the Lessor for herself and on behalf of the Operational Creditor once again reiterated that the consolidated monthly rentals including all amenities charges is Rs.1,50,000/- per month. If the Corporate Debtor was dissatisfied with the leased premises or if there was any dispute, the Corporate Debtor would not have sought permission from the Operational Creditor to cite the leased out premises at the time of obtaining loan from the Bank. It is submitted that no notice demand/dispute has ever been served upon the Operational Creditor prior to the receipt of the statutory notice of demand by the Corporate Debtor. As such, there is no existence of pre-existing dispute by and between the Operational Creditor and the Corporate Debtor. It is submitted that the lease was renewed willfully by the Operational Creditor vide letter their dated 16th October, 2017. Subsequently, the lessor prepared a Memorandum of Understanding dated 31st December, 2017 which was replied to by a letter of the Corporate Debtor dated 15th January, 2018, pursuant to which lease deed dated 12th March, 2018 was executed with 10% increase in the consolidated rentals and service charges from Rs. 1,50,000/- to Rs. 1,65,000/- per month. The Operational Creditor has denied all other averments made in the reply affidavit.

36. The Operational Creditor has further filed one **supplementary affidavit** on 21st December, 2021 submitting that subsequent to the filing of the said application, the Operational Creditor has discovered that certain

pleadings and specifications with regard to the instant petition and the annexure thereof have been inadvertently missed out by the Advocate on record of the Operational Creditor herein and that would be highly germane to bring to the notice of the Adjudicating Authority for proper adjudication. It is submitted that reference to the said application be made to the lease agreement dated 22/01/2015 and subsequent renewal of lease agreement dated 12th March, 2018. It is submitted that in accordance with the renewed lease agreement dated 12th March, 2018, the Corporate Debtor was liable to pay monthly rent of Rs.33,000/- along with other amenities charges. It is submitted that the Corporate Debtor has been a habitual defaulter as regards payment of rent, TDS and amenities charges and a sum of Rs. 4,38,271/- plus interest is due and outstanding from the Corporate Debtor to the Operational Creditor. The Operational Creditor has relied upon rent receipts (Annexure-H) from June,2018 onwards, which is the period of default from which such default started. It is reflected that Operational Creditor has received certain payments on 20th November, 2018, 16th January,2019, 8th March, 2019. It is submitted in the Supplementary Affidavit that upon perusal of the rent receipts, it would be apparent that the Corporate Debtor had duly received the said bills but had delayed in making the payments and the said payments received on 20th November, 2018, 16th January, 2019 and 8th March, 2019 relate to the month of March, April, May 2018.

37. It is submitted that no payment has been made by the Corporate Debtor for the period from June, 2018 to March, 2019 which goes to show that the Corporate Debtor has lost its financial stratum and it does not deserve to be in operation, therefore, the present application should be granted.
38. During the course of arguments, Ld. Counsel for the Operational Creditor has submitted that the Operational Creditor has claimed a sum of Rs.4,38,271/- for the period June, 2018 to March, 2019 on account of unpaid amenity charges and other demands. It is submitted that

Jaishree Bajoria is the lessor of the Corporate Debtor and she has nominated the Operational Creditor for providing amenities/services at the demised premises to the Corporate Debtor.

39. It is stated that the case made out by the Operational Creditor is that the Operational Creditor has been providing services of sanitization and water supply to the Corporate Debtor which was duly accepted by the Corporate Debtor without any protest and/or demur whatsoever. It is submitted that the Corporate Debtor has been receiving the services and the water supply and has even made payments with regard to the same. The Corporate Debtor has admitted in its ledger account which has been produced by way of filing an affidavit before this Adjudicating Authority that the Operational Creditor has been providing services to the Corporate Debtor. It is submitted that providing of services by the operational Creditor to the Corporate Debtor is categorically and unconditionally admitted by the Corporate Debtor. Therefore, it shows privity of contract between the Operational Creditor and the Corporate Debtor. The Corporate Debtor itself in writing, accepts that the services were provided by the Operational Creditor to the Corporate Debtor at page 26 of the rejoinder.
40. Ld. Counsel for the Operational Creditor has placed before us a judgement passed by the Hon'ble Supreme Court in ***Haji Mohammed Ishaq Md. SK. Vs. Mohamed Iqbal & Mohamed Ali & Ors (1978(2)SCC 493*** wherein it was held that *"a contract between the parties may be implied from the conduct of the parties. In the instant case at hand, the corporate debtor themselves admit in their own ledger that the operational creditor has provided services to the corporate debtor which itself is the admission of the contract by the Corporate Debtor themselves"*.
41. It is further submitted that in the light of the admission made by the Corporate Debtor in its own ledger account that the Operational Creditor

was providing services of sanitization and water to the Corporate Debtor coupled with the fact that part payments have already been made by the Corporate Debtor to the Operational Creditor as would be evident from the Bank statement.

42. It is submitted by the Operational Creditor that on a statutory notice of demand dated 3rd May, 2019 in Form 3 under section 8 of the Code, 2016, there was no reply by the Corporate Debtor to the notice of demand which itself shows that the Corporate Debtor has not raised any dispute whatsoever to the debt in question. It is submitted that Hon'ble Supreme Court of India in the matter of **Mobilox** judgment has held that the Corporate Debtor has to reply to the supplementary notice of demand and show pre-existing dispute which the Corporate Debtor has failed to do in the present case. There is not an iota of correspondence between the Corporate Debtor and the Operational Creditor in the form of letters/emails prior to the date of the statutory notice wherein the Corporate Debtor has raised pre-existing dispute and that no letter has been annexed by the Corporate Debtor. It is, therefore, evident that there existed no dispute between the Corporate Debtor and the Operational Creditor and as such the application filed by the Operational Creditor deserves to be admitted.
43. The application is otherwise complete in all respects.
44. During the course of arguments, Ld. Counsel for the Corporate Debtor, however, submitted that the Corporate Debtor on 22nd January, 2015 entered into an agreement of Lease signed by and between Mrs. Jaishree Bajoria, being the Operational Creditor and Dev R Nil Design Private Limited, the Corporate Debtor, being the Lessor and Lessee respectively therein, in respect of all that space measuring about 6000 sq.ft. at premises No.42P, Raja Santosh Road, Kolkata- 700027(hereinafter referred to as the "Said Premises") for a consideration of Rs.30,000/- per month as lease rent. After successful completion of the said tenure of

lease agreement as per terms of renewal on March 22, 2018, a fresh agreement for lease of the said premises was entered into by and between Operational Creditor and Dev R Nil Design Private Limited, the Corporate Debtor, being the Lessor and Lessee respectively for the consideration of Rs.33,000/- per month as lease rent.

45. It is submitted that this application is one of a number of applications of similar nature filed by alleged service providers that have been filed on the basis of the same Lease Agreement executed between Mrs. Jaishree Bajoria and the Corporate Debtor and in one of such applications being **C.P.(IB) No. 970/KB/2019 –Daulat Sales Agencies Pvt.Ltd. Vs. Dev R Nil Designs Pvt. Ltd.**, was dismissed by this Adjudicating Authority on 30.04.2021 on the ground that there is no privity of contract between the parties as the Operational Creditor was not party to any agreement. A recall application being I.A. No.553/KB/2021 was filed by the Operational Creditor and the same was also dismissed by this Adjudicating Authority on 14.01.2022.
46. It is submitted that the relevant observations made by this Adjudicating Authority in the aforesaid matter on 30.04.2021 are as follows:

“ 15. It would be seen that the Corporate Debtor had agreed to pay the agreed sum to Mrs. Jayshree Bajoria and as such there was privity of contract between Mrs. Jayshree Bajoria and the Corporate Debtor only. Simply by nominating one or more Companies to provide various types of services would not create a valid contract between Corporate Debtor and the Operational Creditor one of the nominated companies, unless there is a tripartite agreement in this regard, with specific role assigned to the Operational Creditor.

16. In the present case, the demand letter issued by the Operational Creditor to the Corporate Debtor does not appear to us to be a valid notice of demand, for lack of privity of contract between the Operational Creditor and the Corporate Debtor. If we go by the two lease agreements, the privity of contract is

between Mrs. Jayshree Bajoria and the Corporate Debtor, although, in the pleadings, the Operational Creditor has mentioned the names of four companies and the Operational Creditor's name finds mentioned in the pleadings. 17. The Operational Creditor could not have claimed anything from the Corporate Debtor and if anybody could have claimed anything from the Corporate Debtor, it was Mrs. Jayshree Bajoria only because both these agreements dated 22nd January, 2015 and 12th March, 2018 have been entered into between Mrs. Jayshree Bajoria and the Corporate Debtor herein, without there being any mention of the Operational Creditor. Even if some payments have been made by the Corporate Debtor to the Operational Creditor as nominee of Mrs. Jayshree Bajoria, it will not entitle the Operational Creditor to claim any further amount directly from the Corporate Debtor because the Operational Creditor has been acting only as a nominee of Mrs. Jayshree Bajoria and not an independent person, party to the agreement with the Corporate Debtor.

18. In our considered view, the present proceedings under section 9 of IBC initiated by the Operational Creditor cannot be allowed to continue and we hereby dismiss the application of the Operational Creditor being devoid of any merit particularly on the ground of lack of privity of contract between the Operational Creditor and the Corporate Debtor, which disentitles the Operational Creditor from claiming any amount for any services alleged to have been provided to the Corporate Debtor as a nominee of Mrs. Jayshree Bajoria. The application is, therefore, dismissed.

47. While replying to the arguments of the Corporate Debtor, Ld. Counsel for appearing for the Operational Creditor has submitted that in this case also, the Corporate Debtor has entered into deed of lease dated 22nd January, 2015 followed by its renewal vide deed of lease dated 12th March, 2018 with Smt. Jaishree Bajoria . In Paragraph J on page 5 of the lease deed dated 12th March, 2018, the parties i.e. Lessor Smt. Jaishree Bajoria and the Lessee (the Corporate Debtor herein) agreed as under:-

*“ j. That the Lessee agrees to pay the persons and /or complains, nominated by the Lessor, a sum of Rs.1,32,000/- (Rupees One Lakh Thirty Two Thousand only) per month and every month during the subsistence of Lease period of three years, as and by way of **Amenities Charges** towards building, electrical, sanitation maintenance, and/or for the other amenities provided in the Demised Property besides the monthly rental or till such*

time or earlier determination of Lease, subject to deduction of TDS. The nominated parties shall provide the Lessee proper bills and receipts for payments”.

48. The Lessee (Corporate Debtor herein) further agreed in Clause M of the Deed of Lease is as under:-

“ m. That the Lessee shall pay the rent and amenities charges as agreed hereinabove for every month hereby reserved to the Lessor and the nominated persons within 10th day of the succeeding English Calender month. In case of delay in payment of rent and amenities charges, the Lessee shall be liable to pay interest @ 2% per month over and above the same.”

49. Pursuant to the Lease Deed of 2015 and 2018, the Corporate Debtor /the Lessee was sent a letter by the Lessor Smt. Jaishree Bajoria on 22nd January, 2015 relating to the first lease of 2015 and letter dated 12th March, 2018 relating to the deed of lease of 2018. In both these letters, the Lessor had informed the Corporate Debtor that in terms of the Lease Agreement, the Corporate Debtor shall directly pay the Amenities Charges to the nominated parties for the services rendered by them to the Lessee every month with effect from 1st January, 2015 in the first list and with effect from 1st January, 2018 in the second list.
50. These two letters were duly received by the Corporate Debtor and the footnote duly signed by the Director of the Corporate Debtor confirms their liability in the following words:-

M/s Dev R Nil Designs Private Limited,

22nd January, 2015

42P, Raja Santosh Road,

Kolkata- 700027

Kind Attn: Mr. Navonil Das- Director

Dear Sir,

Sub: My Space at Premises No. 42N & 42P, Raja Santosh Road, Kokata-700027

This is to inform you that as per terms of our Lease Agreement dated 22nd January, 2015, you shall pay Lease Rent Amount of Rs. 30,000/=(Rupees Thirty Thousand only) per month to me w.e.f. 1st January, 2015 for which

the bill is sent enclosed.

Kindly note that as per Clause II(j) of the said Lease Agreement, you shall directly pay the following Amenity Charges to the following parties for the services rendered by them to your company every month w.e.f. 1st January, 2015:-

Sl.	Name	Address	Amount	Service Provider
1	Pragya Financial Services Pvt. Ltd.	83,S.P.Mukherjee Road, Kolkata-700026	30,000.00	Electrical services
2	Natraj Enclave Pvt. Ltd.	42,Raja Santosh Road, Kolkata-700027	30,000.00	Repair & Maintenance Services
3	Shiv Lalit Barter Pvt. Ltd.	57/15,Ballygunge Circular Road, Kolkata-700019	30,000.00	Sanitation and Water supply Services
4	Daulat Sales Agencies Pvt.Ltd.	57/ 15,Ballygunge Circular Road, Kolkata-700019	30,000.00	Security Services
		Total	1,20,000.00	
			0	

Kindly confirm and oblige

Thanking you,

Yours Faithfully,

We confirm the payment per month of the aforesaid Service Charges from January, 2015 for the entire period of the Lease As per Lease Agreement dated 22nd January, 2015 and their appointment letters.

JAISHREE BAJORIA

For DEV R NIL DESIGNS PRIVATE LIMITED

Authorised Signatory / Director

(Navonil Das)

Director

51. Similarly, in letter dated 12th March, 2018, the Lessor wrote to the Corporate Debtor/Lessee on the same lines and the Corporate Debtor admitted its liability in the following words:-

*M/s Dev R Nil Designs Private Limited,
42P, Raja Santosh Road,
Kolkata- 700027*

Dated: 12th March,2018

Kind Attn: Mr. Navonil Das- Director

Dear Sir,

Sub: My Space at Premises No. 42N & 42P,42V,42W,42X and 42Y Raja Santosh Road, Kokata-700027

This is to inform you that as per terms of our Deed of Lease dated 12th March, 2018, you shall pay Lease Rent Amount of Rs. 33,000/=(Rupees Thirty Three Thousand only) per month to me w.e.f. 1st January, 2018 for which the bills upto March, 2018 are sent enclosed.

Kindly note that as per Clause II(j) of the said Lease Agreement, you shall directly pay the following Amenity Charges to the following parties for the services rendered by them to your company every month w.e.f. 1st January, 2018:-

Sl.	Name	Address	Amount	Service Provider
1	Panihati Steels Pvt.Ltd.	59, Ballygunge Circular	33,000.00	Electrical & Maintenance services
2	Natraj Enclave Pvt. Ltd.	42,Raja Santosh Road, Kolkata-700027	33,000.00	Repair & Maintenance Services
3	Shiv Lalit Barter Pvt. Ltd.	57/15,Ballygunge Circular Road, Kolkata-700019	33,000.00	Sanitation and Water supply Services
4	Daulat Sales Agencies Pvt.Ltd.	57/ 15,Ballygunge Circular Road, Kolkata-700019	33,000.00	Security Services
		Total	1,32,000.00	

Kindly confirm and oblige

Thanking you,

Yours Faithfully,

We confirm the payment per month of the aforesaid Service Charges from January, 2018 for the entire period of the Lease As per Lease Agreement dated 12th March, 2018 and their appointment letters.

JAISHREE BAJORIA

For DEV R NIL DESIGNS PRIVATE LIMITED

Authorised Signatory / Director

(Navonil Das)

Director

52. The Corporate Debtor in the aforesaid two letters has confirmed and accepted its liability towards the Operational Creditor, as also to the other service providers mentioned in the aforesaid two letters.
53. The Operational Creditor further submitted in its rejoinder that the Corporate Debtor in the earlier being CP (IB) No. 792/KB/2019 had filed affidavit in opposition dated 1st December, 2019 and along with the said rejoinder affidavit, the Corporate Debtor had filed letter dated 12th March, 2018 received from the Lessor Smt. Jaishree Bajoria in the Lease dated 12th March, 2018 (Annexure B in the reply affidavit) and admittedly the footnote confirming their liability.
54. It is submitted that along with the said affidavit, the Corporate Debtor had also annexed (Annexure-C) which is the Ledger account of the Operational Creditor herein i.e. ***Shiv Lalit Barter Pvt. Ltd.*** from 1st April, 2015 to 31st March, 2016 and 1st April, 2016 to 31st March, 2017. It is submitted that the Corporate Debtor had continuously made the payment which was mentioned as rent (Factory) to the Operational Creditor. During the above said period, all these entries are reflected in the Ledger and confirmed that the Corporate Debtor had the privity of

contract in this matter which can be deciphered from the specific confirmation and admission in the footnotes written on behalf of the Corporate Debtor by its Directors and regular payments made by the Corporate Debtor to the Operational Creditor which is recorded in the Ledger account of the Operational Creditor maintained by the Corporate Debtor which is a part of the pleadings in CP(IB)792/KB/2019.

55. The Corporate Debtor in this matter cannot take the plea that the earlier CP which was between the same parties had been dismissed and therefore this should also be dismissed. In the said case, the Operational Creditor could not prove during the course of his argument that there was privity of contract and could not refer to the specific documents but in the present case, the Operational Creditor has become wiser and has placed on record the documents submitted by the Corporate Debtor itself in its reply in opposition and the annexures filed alongwith the reply in the proceedings relating to the earlier CP (IB) No.792/KB/2019.
56. We have gone through the pleadings of the parties along with all the documents placed on record. In this matter, the plea of the Corporate Debtor that there was no privity of contract between the Operational Creditor and the Corporate Debtor does not hold water. The Corporate Debtor has itself admitted in both the letters pursuant to the Deed of Lease confirming and admitting their liability towards the nominated persons mentioned in that very letters. In addition to this, the Corporate Debtor had also filed Ledger accounts of the Operational Creditor maintained by the Corporate Debtor which form part of the reply affidavit in opposition in their earlier proceedings, also specifically depict the entries of these charges month by month paid by the Corporate Debtor to this Operational Creditor.
57. In view of the aforesaid facts and documents placed on record by the Operational Creditor which had been filed and admitted by the Corporate Debtor in the earlier proceedings, in these proceedings, it does

not lie in the mouth of the Corporate Debtor to say that they are not liable to make the payment of the admitted charges to the Operational Creditor.

58. It may be further noted that the Operational Creditor had duly served upon the Corporate Debtor a statutory notice of demand dated 3rd May, 2019 under section 8 of the Code. The Corporate Debtor did not even reply to the statutory notice of demand dated 3rd May, 2019, which itself shows that the Corporate Debtor has not raised any dispute whatsoever to the debt in question and following the principles of law laid down by the Hon'ble Supreme Court in the Mobilox case, the Corporate Debtor does not seem to have any pre existing dispute. There is no iota of correspondence between the Corporate Debtor and the Operational Creditor in the form of any letters or email prior to the date of the statutory notice wherein the Corporate Debtor has raised any pre existing dispute. It is, therefore, evident that there exists no pre existing dispute between the parties and as such the application filed by the Operational Creditor deserves to be admitted under section 9 of the IBC.
59. The application is otherwise complete in all respects.
60. We, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 (54 of 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.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.
- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Dhruba Mazumder , IRP** having Reg. No. **IBBI/IPA-001/IP-P02086/2020-2021/13248**, email dhurbamazumder@yahoo.co. to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Mr. Dhruba Mazumder,IRP**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective

Resolution Applicant within 105 days from the insolvency commencement date.

- xii) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

61. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

62. List the matter on **19/05/2022** for filing of **Progress Report**.

63. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this the, 22nd day of March, 2022

PJ.