

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT No. V, MUMBAI BENCH**

**C.P. No. 2831/I&B/2019**

Under section 8 & 9 of the IBC, 2016

In the matter of

**Flipspace Technology Labs Private  
Limited**

Unit Nos. 801B, 801C and 802A, 8th  
Floor, Eureka Tower, Mindspace, Link  
Road, Malad (West), Mumbai - 400064

**.... Petitioner / Operational Creditor**

V/s.

**Krishna Developers Private Limited**

508, Gundecha Chambers, Nagindas  
Master Road, Fort, Mumbai - 400023.

**.... Corporate Debtor**

**Order Reserved on: 07.09.2022**

**Order Pronounced on: 10.10.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Mr. Devdatta Uchil, Advocate

For the Corporate Debtor: Ms. Suyesha Kakarla, Advocate

*Per: - Anuradha Sanjay Bhatia, Member (Technical)*

**ORDER**

1. This company Petition is filed by Flipspaces Technology Labs Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Krishna Developers Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed a default in making payment to the extent of Rs. 42,56,382/- which is inclusive of the interest of Rs. 11,56,206/- @ 24% per annum of delayed payment, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Petitioner and the Corporate Debtor entered into a Design and Development Agreement dated 21.03.2017, wherein the Corporate Debtor has availed the services of the petitioner, in providing interior decoration work and civil construction work for the corporate debtor.

3. The Petitioner has raised invoices dated 09.11.2017, 17.01.2018, 23.01.2018, 28.02.2018 and 26.03.2018 to the Corporate Debtor, for the executed work as per the terms of the agreement. Copy of the Agreement and the Invoices are annexed to the Petition.

4. Pursuant to the said invoices, on 31.01.2018 a part payment amounting to Rs. 6,86,000/- was received by the Petitioner.

5. The Petitioner sent several reminders for the outstanding amount. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its

dues. Thus, on account of non-payment of outstanding dues, on 27.03.2019, the Petitioner issued a Demand Notice, under Section 8 of the Code.

6. On 27.03.2019 a notice was sent in Form 3 via, email and by registered post A.D. receipts on the registered office address of the Corporate Debtor, but the same was returned with the remark “*item on hold*”.

7. The Corporate Debtor, on 27.04.2019 replied to the demand notice. Since the reply to notice was not within the time prescribed under Section 8(2) of the IBC, therefore the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed on 25.07.2019.

8. The Corporate Debtor filed a detailed reply opposing the admission of the above Company Petition on various grounds, more particularly, on the ground of pre-existing disputes between the parties. The contentions of the Corporate Debtor are as follows:

- (I) The Corporate Debtor submits that the Petitioner has entered into the said agreement on 21.03.2017 for a total agreed value of Rs. 90,00,000/- exclusive of taxes. The Petitioner and the Corporate Debtor has mutually agreed on the stages of payment in the following manner –

<b>Advance</b>	<b>Date</b>	<b>% of Total value (in INR)</b>
1 <sup>st</sup> Advance	Day 0 (09-05-2017)	30% amounting to Rs. 27,00,000/-
2 <sup>nd</sup> Retention Amount (RA)	Day 06 (15-05-2017)	10% amounting to Rs. 9,00,000/-

3 <sup>rd</sup> RA	Day 11 (26-05-2017)	25% amounting to Rs. 22,50,000/-
4 <sup>th</sup> RA	Day 24 (19-06-2017)	25% amounting to Rs. 22,50,000/-
5 <sup>th</sup> RA	<b>180 days post handover</b>	<b>10% amounting to Rs. 9,00,000/-</b>

- (II) The Corporate Debtor submits that the Petitioner has failed to handover the premises within the stipulated period of 55 days (7 days mobilization + 48 days project duration) from the date of first advance by the Corporate Debtor, i.e. 09.05.2017. Thus, causing breach of the said agreement.
- (III) The Corporate Debtor further submits that, it was agreed between the Corporate Debtor and the Petitioner, that the Petitioner shall perform the services with the highest standard of professional and ethical competence and integrity. Failure to comply with the agreed terms, of handing over the premises as per the Corporate Debtor's satisfaction within stipulated time, shall attract penalty. However, there was a delay of about 30 days and the services rendered by the Petitioner were not satisfactory in nature and the same has been conveyed through the emails, annexed to the company petition. The Petitioner has admitted the delay vide Email, dated 11.01.2018.
- (IV) It is submitted that the Corporate Debtor has made the following payments to the Petitioner.

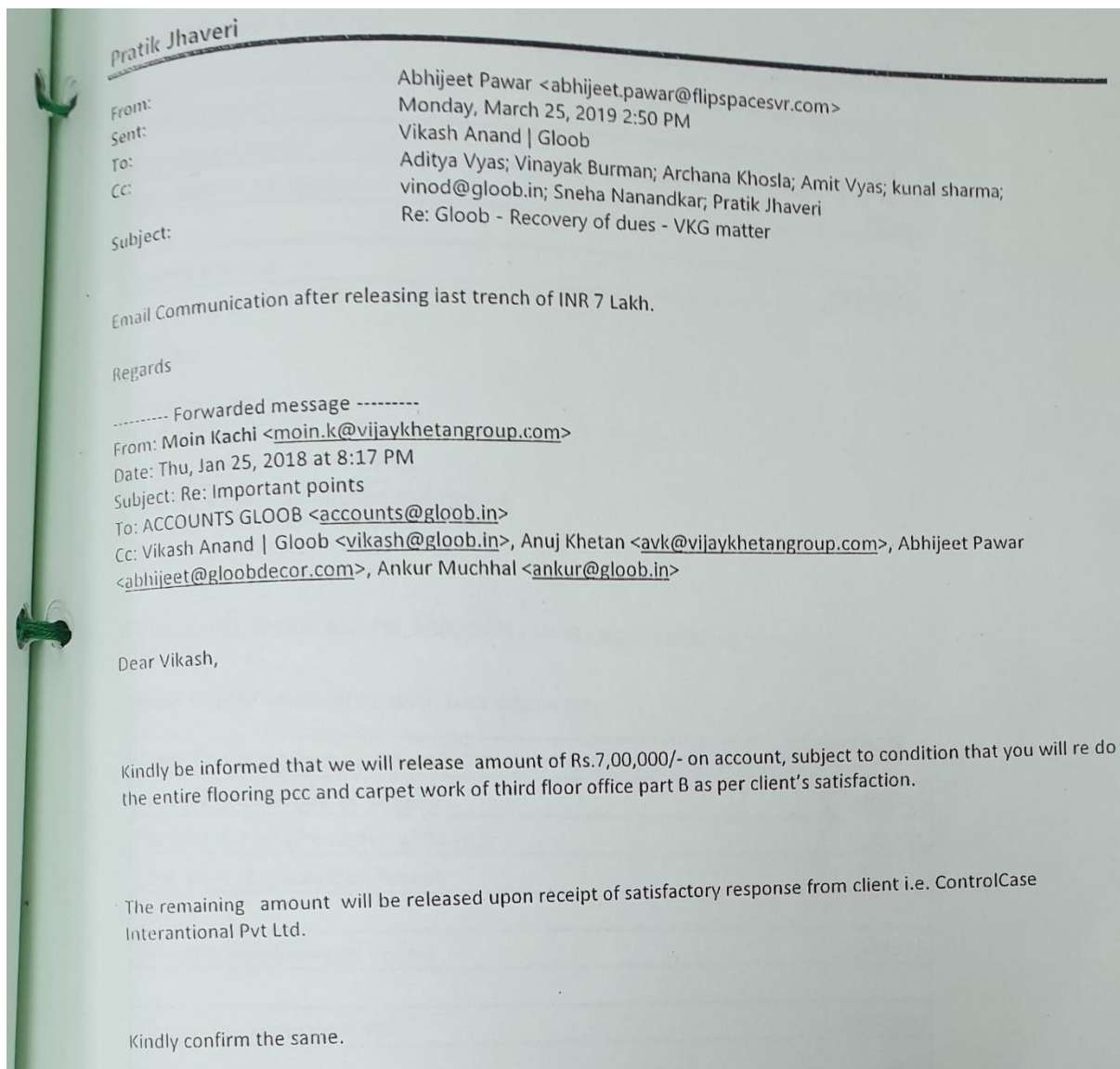
<b>Sr. no.</b>	<b>Date</b>	<b>Amount in Rs.</b>
1	08.04.2017	25,00,000/-
2	17.04.2017	10,00,000/-
3	26.04.2017	20,00,000/-
4	13.06.2017	5,00,000/-
5	21.06.2017	25,00,000/-
6	29.01.2018	7,00,000/-
<b>Total</b>		<b>92,00,000/-</b>

- (V) It is further submitted that despite making timely payments, the Petitioner has not raised any bill in lieu of its work done. The Petitioner was well aware of the fact, that it has not handed over the premises to the Corporate Debtor in a satisfactory level, leaving the project half way, which was ultimately completed by the Corporate Debtor. If any amount incurred by the Petitioner towards the repairs, the same was due to its own fault for which the Corporate Debtor is not liable to pay.
- (VI) Corporate Debtor submits that the Petitioner has failed and neglected to comply with its part of obligations, by not completing the agreed work in a satisfactory manner due to which they had suffer pecuniary losses. Hence, the Insolvency Petition, is legally untenable and based on false and vexatious grounds, preposterous in both letter and spirit, not binding upon the Corporate Debtor and therefore required to be withdrawn.

9. In view of the above contentions raised by the Corporate Debtor, the issue that arise for consideration is:

*Whether there are pre-existing disputes between the parties?*

10. The Operational Creditor himself has annexed certain emails, to his company petition covering from page nos. 59 to 70, 104 to 115 and 128 to 147 which will clinch the issue of pre-existing disputes. It is important to look at the following emails for the sake of clarity and appreciation.



Krishna Ventures Ltd. Mail - Re: Regarding snag Issues

**VKG**  
VIJAY KHETAN GROUP  
VIRTUES AND GROWTH

Moin Kachi <moin.k@vijaykhetangroup.com>

**Re: Regarding snag issues**

Moin Kachi <moin.k@vijaykhetangroup.com>  
Re: Sarthak Agrawal <sarthak.agrawal@flipspacesvr.com>  
Cc: privilege support <vikash@gloob.in>, Sanket Patne <sanket.patne@flipspacesvr.com>, Gloob Purchase <purchase@gloobdecor.com>, Vidhi Shah <ritesh.poojary@flipspacesvr.com>, Akash Andhale <akash.andhale@flipspacesvr.com>, Turnkey Support <tksupport@gloobdecor.com>, Loveksh Muchhal <loveksh@gloobdecor.com>

Tue, Sep 26, 2017 at 4:25 PM

Hi Sarthak,

Kindly be informed that the de-skinning of PCC work is been observed everywhere at 3rd floor office.

This is very embarrassing as this issue has come directly from CEO of Controlcase International Pvt Ltd.

I have assured them that it will get rectified in this week itself.

Hence kindly look into and get it resolved on war footing basis.

Thanks & Regards,

On Fri, Sep 15, 2017 at 8:44 PM, Sarthak Agrawal <sarthak.agrawal@flipspacesvr.com> wrote:  
Dear Moin,

I just spoke to Vikash and he told me about the list of pending snag items at your office. Apologies for the gap in communication.

I've added our turnkey support Email ID to this thread. Loveksh, the person-in-charge for snags would get in touch with you to understand the requirements and arrange requisite materials from our side. For any future communication regarding the same, please include this email address which will help us coordinate this effort better.

Thanks!

Regards,  
Sarthak Agrawal  
Sr. Manager

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**VKG**  
VIJAY KHETAN GROUP

Moin Kachi  
Sr Relationship Manager-Corporate Leasing.  
(p) 022-28269569 (m) +91-9833995485 (a) 7th Floor, Corporate Centre, Andheri-Kurla Rd, Andheri (E), Mumbai - 400 059.  
(w) www.vijaykhetangroup.com (a) moin.k@vijaykhetangroup.com

Regards,

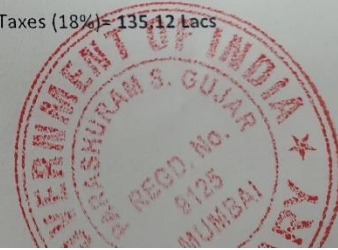
On Mon, 8 Jan 2018 at 5:14 PM, Vikash Anand | Gloop <vikash@gloop.in> wrote:  
Dear Moin,

Gentle reminder once again. Need your co-operation here. We have been repeating this multiple times, but we are not getting any clear response from your end. Please understand that we are also liable to pay to our vendors and beyond a limit, it becomes really difficult to manage them.

Please find the calculation below:

Total project value: 92.03 (lacs)+ 22.48 (additional work and HVAC) + Taxes (18%)= 135.12 Lacs

5



Out of which we have only received 85 lacs so far.

So total outstanding amount is close to 50 lacs.

Request you to clear the pending amount (except retention) asap.

Also PCC and carpet have been frequent complaints from client, the ideal way is to redo this completely, so that we can resolve the same once and for all. If we want to redo this, we will have to spend at least 6-7 lacs on PCC and Carpet. It will be a huge hit, but client satisfaction is very important to both of us.

We will have this done at our cost, once we receive pending amount from VKG.

Looking forward to hear from you.

@ Sarthak and Lovekesh: Please take a note of this.

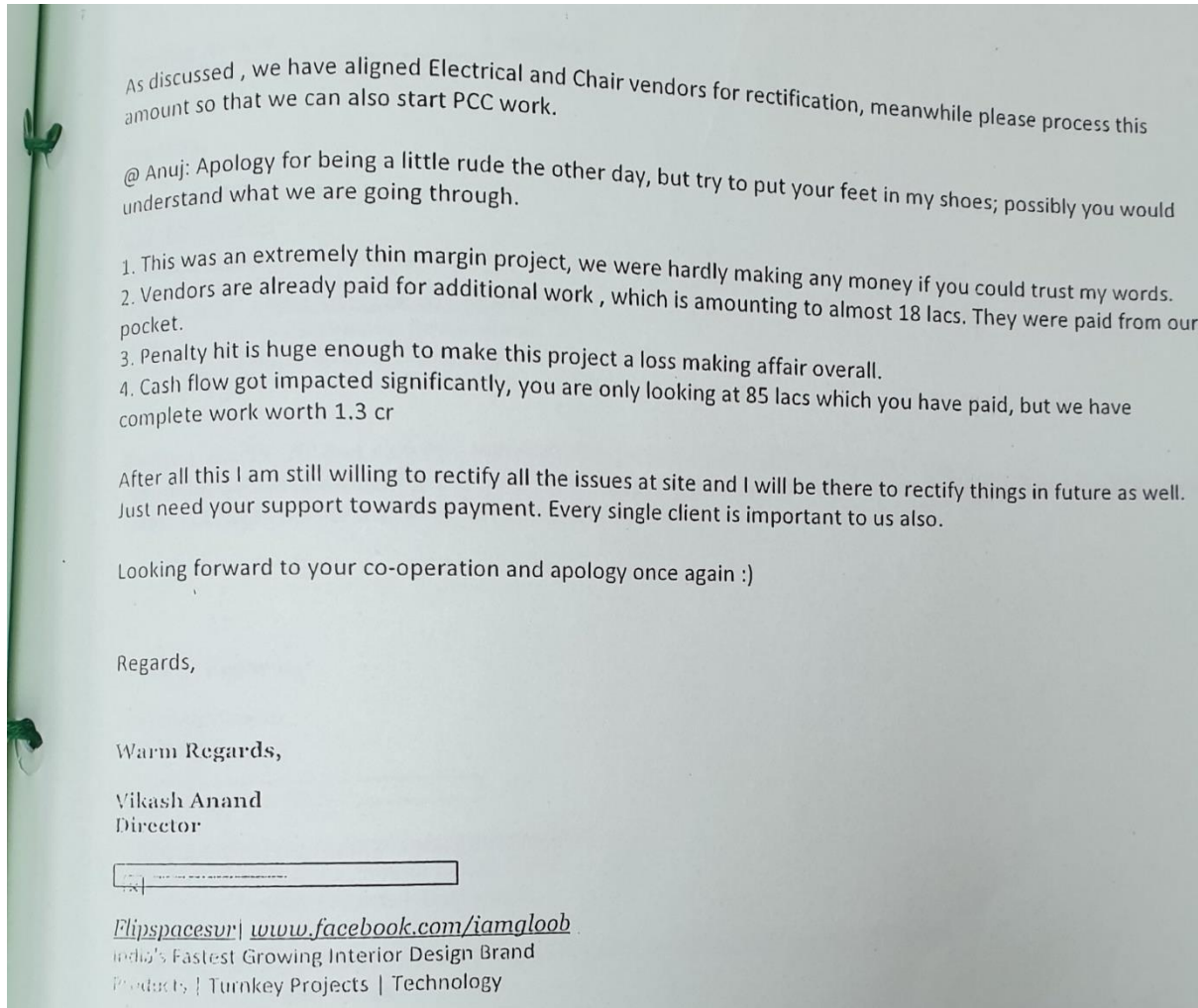
Regards,

Warm Regards,

Vikash Anand  
Director

Flipspacesvr | [www.facebook.com/iamgloop](http://www.facebook.com/iamgloop)  
India's Fastest Growing Interior Design Brand  
Products | Turnkey Projects | Technology

<vikash@gloopdecor.com> wrote:



11. It is very clear from the above referred emails, that there is a dispute even before the issuance of the Demand notice dated 27.03.2019, by the Petitioner. The Corporate Debtor in his reply to the Demand notice dated 27.04.2019 has pointed out the delay in handing over the site in a satisfactory manner. The Petitioner in the above emails has admitted to re-do and rectify the unsatisfactory work. Thus, upon perusing the above emails exchanged between the parties, this bench notes that both parties are in loggerheads much prior to issuing the demand notice.

It is important to note here that the Operational Creditor has not filed any Affidavit as prescribed under Section 9(3)(b) of the Code while filing the

Company Petition under section 9 of the Code before this bench, stating that no notice given by the Corporate Debtor relating to a dispute of the unpaid Operational Debt, is in itself qualifies for the fact that the Petitioner is well aware of the fact that there is a pre-existing dispute.

12. The Hon'ble Supreme Court in Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited held that what the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

Therefore, applying the above analogy laid down by the Hon'ble Supreme Court to the present case on hand, this Bench has no option except to hold that there are "pre-existing disputes" between the parties and there is no merit in the above Company Petition and the above Company Petition deserves to be '**dismissed**' on that score alone.

13. Accordingly, the above petition is '**dismissed**' on the ground of "Pre-existing disputes" between both the parties.

Sd/-

ANURADHA SANJAY BHATIA  
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO  
MEMBER (JUDICIAL)