

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 491 of 2019**

**IN THE MATTER OF:**

**Aslam Shaikh**

**...Appellant**

**Vs.**

**Solaris Ceramics Private Limited**

**...Respondent**

**Present: For Appellant: - Mr. Rajshekhar Rao, Mr. Aman Verma,  
Mr. Abhishek Adke, Advocates.**

**For Respondent: - Ms. Sakshee Sharma and Mr. Nikhil  
Jain, Advocates.**

**O R D E R**

**06.05.2019—** The Respondent- ('Operational Creditor') has filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short). It having admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by order dated 9<sup>th</sup> April, 2019. The said order is under challenge.

2. Learned counsel appearing on behalf of the Appellant, Shareholder of 'Nasban Import and Export Private Limited'- ('Corporate Debtor') submits that there is no amount payable in view of inter communication made through e-mail.

Contd/-.....

3. Reliance has been placed on two e-mails. One dated 15<sup>th</sup> February, 2018 (at Page 110) and the other dated 2<sup>nd</sup> December, 2017 (at Page 111), which reads as follows:



110  
Varmora Legal Dept. <legal@varmora.com>

**Fwd: FUTURE BUSINESS AS DISCUSSED**

Exports Varmora <jaydeep@varmora.com>  
To: "Varmora Legal Dept." <legal@varmora.com>

Thu, Feb 15, 2018 at 11:37 AM

-----  
Thanks & Regards,  
Jaydeep Bhimani

**Varmora Granito Pvt. Ltd.**  
8-A, National Highway, At-Dhuva - 363641, Taluka.Wankaner  
Dist.-Rajkot (Gujarat), India  
Cell : +91 - 97277 77791 (WHATS APP)  
Fax : +91 - 2828 - 287700  
E-Mail: jaydeep@varmora.com  
Web: www.varmora.com  
Skype: jaydeep\_patel1

----- Forwarded message -----

From: nasban exports <nasbanexports@outlook.com>  
Date: Sat, Dec 9, 2017 at 3:32 PM  
Subject: Re: FUTURE BUSINESS AS DISCUSSED  
To: Jaydeep <jaydeep@varmora.com>  
Cc: "int.exports@varmora.com" <int.exports@varmora.com>, Exports Varmora <exports@varmora.com>, "nafeesahmadkhan@hotmail.com" <nafeesahmadkhan@hotmail.com>, hiren <hiren@varmora.com>

Attn Mr Jaydeep

As per plan with Mr Ghannam he is going to give you 300 container order before March as he has opened new branches and company. You will soon be able to recover your money as agreed. As agreed 400\$ commission per container in all future business you will be able to recover all your money. Once you have recovered your money you will be the only gainer as I don't want any commission after your dues are recovered.

So please cooperate with us till that.  
Also in last email I have asked you 3 points please reply on all 3.

Thanks  
Nafees khan

On 07-Dec-2017, at 3:07 PM, Jaydeep <jaydeep@varmora.com> wrote:

Dear Aslambhai,

1 of 3

12/07/2018, 12:58 PM

TRUE COPY

ATTESTED BY  
  
D. M. PAREKH  
NOTARY TANKARA

Good day!

Waiting for update on payments.

Thanks,  
Jaydeep  
Sent from my iPhone

On 04-Dec-2017, at 1:10 PM, nasban exports <nasbanexports@outlook.com> wrote:

Hi Jaydeep

Received your email .Thanks

- 1)Regarding business with Awlad Al Jazirah their sister company and individual name for obtaining order.In all future business with Ghannam family you have to keep the same commision of 400\$ per container as agreed by your director Hiren Varmora.We want this commision untill your dues are recovered with Nasban till then you have to co operate with us and inform on email regularly about the same.This much cooperation we need from you.  
We have made an fully functional office in Mumbai for Awlad Al Jazirah and Ghannam family as per the future plan discussed with them. Now you are doing business directly with them without Nasban
- 2) In your email you have agreed to adjust the due amount from awlad al jazirah which we have to receive from ghannam  $40,229\$ \times 64 = 25,74,656/-$  INR. Also new order of 42 container  $\times 400 \$ = 16,800\$ \times 64 = 10,75,200/-$ INR. Total amount to adjust currently  $25,74,656 + 10,75,200 = 36,49,856/-$  total.Reduce this amount from the pending dues and let me know the balance.
- 3)Also give us breakup of all dues as you have mentioned in the previous mail.

Thanks.  
Aslam

**NASBAN IMPORT AND EXPORT PVT LTD  
182,ASRA BUILDING, 1ST FLOOR  
ABOVE JAMMU AND KASHMIR BANK  
WATERFIELD RD, BANDRA (W)  
MUMBAI 400050**

From: Jaydeep <jaydeep@varmora.com>  
Sent: Saturday, December 2, 2017 8:43:46 PM  
To: nasban exports

2 of 3

12/07/2018, 12:58 PM

TRUE COPY

ATTESTED BY

D. M. PAREKH  
NOTARY TANKARA

4. Heard Mr. Rajshekhar Rao, learned counsel appearing on behalf of the Appellant and Ms. Sakshee Sharma, learned counsel appearing on behalf of the Respondent.

5. On plain reading of the two emails aforesaid, it is clear that the debt amount was payable by the 'Corporate Debtor'. Subsequently they had made some correspondence but the Respondent in view of such default of payment filed application under Section 9 of the 'I&B Code'.

6. Learned counsel for the Appellant submits that the Respondent cannot recover the money as it was either to be adjusted or was to be recovered in terms of the letter dated 15<sup>th</sup> February, 2018. However, as the 'Corporate Insolvency Resolution Process' is not a recovery proceeding, we are not inclined to accept such submission.

7. We find no merit in this appeal. It is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

Ar/g