

**NATIONAL COMPANY LAW TRIBUNAL**  
**CHANDIGARH BENCH (COURT-II)**

**Company Petition No. (IB)-517/Chd/Pb/2019**

**IN THE MATTER OF:**

**Oriental Bank of Commerce**

**Through Chief Manager- Recovery,**

**Resolution & Law Cluster, Patiala**

Corporate Office at Plot No. 5

Institutional Area, Sector 32,

Gurugram, Haryana- 122001

Main Branch, Rajpura- 140401

**... Applicant/Creditor**

**Versus**

**M/s Nuway Organic Naturals (India) Ltd.**

N.H. 1, Mile Stone 232,

Delhi-Amritsar, Village Devi Nagar,

Rajpura, Punjab- 140401

**...Respondent**

**Order Delivered on: 25.04.2024**

**SECTION: Section 7 of IBC 2016**

**CORAM:**

**SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Advocates Harsh Garg, Pulkit Goyal

**For the Respondent** : Adv Yashpal Gupta

## Judgement

**PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)**

Oriental Bank of Commerce (for brevity, the “**Applicant**”) has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Nuway Organic Naturals (India) Ltd. (for brevity, the “**Respondent**”).

2. The Respondent namely, M/s. Nuway Organic Naturals (India) Limited is a Company incorporated on 10.07.1995 under the provisions of the Companies Act, 1956 with CIN L22012PB1995PLC016755 having its registered office at N.H. 1, Mile Stone 232, Delhi-Amritsar, Village Devi Nagar, Rajpura, Punjab- 140401, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.20,00,00,000/-, and the Paid-up Share Capital is Rs.16,15,46,750/-, as per the master data annexed with the application.

3. In the application, it is averred by the Applicant that it had sanctioned various Credit Facilities for an aggregate amount of Rs. 4 Crores, Term Loan I of Rs. 13.92 crores, Term Loan II of Rs. 2.48 crores, and Term Loan III of Rs. 3.89 crores to the Respondent. Thus, the total credit limit sanctioned by the Applicant bank in favour of the respondent are to the tune of Rs. 24.29 crore as per the last Sanction Letter dated 14.03.2016.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default as claimed by the applicant in Part IV of the application reads thus:

<p>2 AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>The Corporate Debtor was sanctioned various credit facility by the petitioner Financial Creditor. As the Corporate Debtor defaulted in the payment of interest and principal amount which resulted in classifying account as NPA by the Financial Creditor on 30/6.2017. Thereafter demand notice under section 13 (2) of SARFAESI Act, 2002 dated 01.07.2017 was issued by the Financial Creditor to the Corporate Debtor demanding an amount of Rs.20,13,72,347.81 as on 30.08.2019 along with future interest at the contractual rate along with incidental expenses. Bank account statements along with calculation of interest and penal interest after the accounts were classified as NPA maintained as per the provisions of Banker's Books Evidence Act, 1891 are attached herewith as Annexure-1/3 (Colly). Same may be read as part of this column.</p> <p>Table for working of default for all the accounts of corporate debtor:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">1.</td> <td style="width: 40%;">Amount of disbursement</td> <td style="width: 55%;">Rs. 24.29 crores, vide 4 credit facilities.</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Date of default</td> <td>Various dates on which the default took place as per account</td> </tr> </table>	1.	Amount of disbursement	Rs. 24.29 crores, vide 4 credit facilities.	2.	Date of default	Various dates on which the default took place as per account
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2.	Date of default	Various dates on which the default took place as per account					

5. As per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 20,13,72,347.81. It has been added that the Account of the Respondent Company was classified as NPA on account of default on 30.06.2017. It is further submitted that on 01.07.2017, the Applicant Bank issued the Loan Recall Notice-cum-Invocation of Guarantees u/s 13(2) of SARFAESI Act, 2002, calling upon the Respondent and other obligors to pay the defaulted amount.

6. In support of its case, the Applicant has relied on the following documents:

(i) Copy of order CP (IB) NO. 265/Chd/Pb/2018 of NCLT Chd Bench dated 28.02.2019;

(ii) Copy of Original Application against CD before DRT-III, Chd bearing OA no. 2185 of 2018.

(iii) Copy of CIBIL Report of the CD.

(iv) Copy of sanction letters dated 02.01.2010, 01.10.2011, 11.03.2013 & ad-hoc Sanction dated 18.03.2013, 12.05.2013, 14.03.2016;

(v) Loan Recall Notice u/s 13(2) of SARFAESI Act, 2002 dated 01.07.2017; Possession Notices dated 29.09.2017 & 19.02.2018 and Sale notice dated 30.06.2018.

(vi) Copies of Balance and Security Confirmation Letters;

(vii) Copy of OTS Proposal

(viii) Copy of the OTS Cancellation Letter dated 10.06.2019.

7. Based on the abovementioned facts and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On issuance of the notice, the Respondent has filed its reply stating mainly the following:

8.1 The present Application is filed without proper Authorization and is prima facie liable be dismissed. The Power of Attorney dated 20-09-2003 is signed by Mr. Tejendra Mohan Basin, named to be General Manager of the Financial Creditor and the Authorization Letter for filing reference under IBC,

2016 is executed by Mr. Sunil Chug stated again to be the General Manger of the Financial Creditor.

8.2 One Time Settlement Scheme ("OTS") was executed between the parties on December 24, 2018 which is annexed along with the Application. The Respondent/CD in compliance to the same and to show its bona fide paid a substantial amount of Rs. 800 Lakhs approximately which shows that the CD is more than willing to pay the dues. But, the Financial Creditor is adamant in grabbing the big chunk of Land of the CD at a much lower value. The estimated Value of the Secured Properties as stated by the Financial Creditor in their Application is stated Rs. 24.64 Crore which is a lot lower than the value of Secured Properties. If a chance is given by reviving the OTS, the Respondent is ready to adhere to and to continue as a going concern.

8.3 The Respondent Company has time and again requesting for the OTS but the Petitioner is pressurizing it to pay the entire amount which incorporates the interest part in the most.

9. We have heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by the Applicant. Since no specific date of default has been mentioned by the Applicant, even by taking the date of NPA i.e., 30.06.2017 as date of default, the application having been filed on 16.09.2019 is well within the limitation.

10. The Respondent in its defence has contended that it had entered a One Time Settlement Scheme (OTS) with the Applicant Bank on 24.12.2018 and to show its bona fide, it paid an amount of Rs. 800 Lakhs approximately. If a chance is given by reviving the OTS, the Respondent is ready to adhere to and

to continue as a going concern. Further, it has stated that the present Application, being filed without proper Authorization, is liable to be dismissed. Per Contra, the Applicant has annexed various documents to prove the existence of debt and default as mentioned in Para 6 of this order. During the hearing, in support of its contentions, the Ld. Counsel for the Applicant referred to the Bank sanction letters, Loan Recall Notice-cum-invocation of Guarantees dated 01.07.2017 issued on behalf of the Applicant Bank, OTS Proposal by the Respondent, and OTS Cancellation Letter dated 10.06.2019.

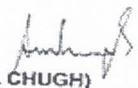
11. The Corporate Debtor in its Reply has admitted that it had made earnest attempts to settle the matter by submitting one-time settlement proposal and to show its bona fide, paid an amount of Rs. 800 Lakhs approximately. Per contra, bank has contended that the said OTS was cancelled vide Letter dated 10.06.2019. Be that as it may, a one-time settlement (OTS) proposal in terms of the judgment of the Hon'ble Supreme Court in **“Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.”** is an acknowledgment of debt. The relevant para of the judgment dated 04.08.2021 reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact*

that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.

(Emphasis placed)

12. To examine the next contention of the Respondent that the present Application is filed without proper Authorization, we refer to the Authority Letter & Power of Attorney (Pages 31A -37 of the application), which reads thus:

<p><b>ओरियन्टल बैंक ऑफ कॉमर्स</b> (भारत सरकार का उपक्रम) प्रधान कार्यालय : प्लॉट सं. 5, इंस्टीट्यूशनल एरिया, सेक्टर-32, गुरुग्राम-122001</p>	 <p>ओ.बी.सी.</p>	<p><b>Annexure-111</b> <b>ORIENTAL BANK OF COMMERCE</b> (A GOVERNMENT OF INDIA UNDERTAKING) <b>Copy.</b> Head Office : Plot No. 5, Institutional Area, Sector - 32, Gurugram-122001</p>
<p><b><u>AUTHORITY FOR FILING REFERENCE UNDER IBC, 2016</u></b></p>		
<p>In exercise of powers conferred upon me by the Board of Directors of Oriental Bank of Commerce vide Board Resolution No. A-12 dated 01.12.2018, this day I, General Manager, Stressed Asset Management Vertical, have decided that claim application be filed before the National Company Law Tribunal under the Insolvency &amp; Bankruptcy Code, 2016 on behalf of Oriental Bank of Commerce against M/s <b>NUWAY ORGANIC NATURALS (INDIA) LIMITED</b> maintaining their account at Branch Office: Rajpura- Main Patiala Road, Patiala.</p>		
<p>In pursuance to said Board Resolution, I further authorise Sh. Krishan Lal Gulati (P.F. No. - 126337) S/o Late Sh. Ramlal Gulati, Chief Manager posted at RRL Cluster Office - Patiala, to file Claim on behalf of Bank in Form "C", engage counsel/s and to file application, sign and verify Form 1, written statement, applications, affidavits and/or any other pleadings and also do other acts necessary for proper filing of application under Insolvency &amp; Bankruptcy Code, 2016 and to do all things required for proper conduct of the case at all stages up to the appellato stage at NCLT/NCLAT, if need be.</p>		
<p>Date: 06.07.2019</p>		<p> (SUNIL CHUGH) GENERAL MANAGER Oriental Bank of Commerce, Stressed Asset Management Vertical, Corporate Office: Gurugram</p>
<p>दूरभाष / Telephones : 0124-4126200, 4126300 Website: www.obcindia.co.in</p>		

1-12-2011 31 50RS.



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GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I GENERAL MANAGER OF Oriental Bank of Commerce, a body corporate, constituted under The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, (No.40 of 1980) with its Head office at Harsha Bhawan, E-Block, Connaught Place, New Delhi-110 001, (hereinafter referred to 'as the Bank') doth hereby nominate, constitute and appoint Shri/Smt. Krishan Lal Gulati, S/o/D/o/W/o Shri Ram Lal, at present in the service of the Bank at Sangrur to be the true and lawful attorney of the Bank to do, transact and execute the following acts, deeds, matters, things, singly or jointly as mentioned herein for and in the name and on behalf of the Bank at any place or places in India where the Bank has established or may establish its branches or offices and also at other places where the Bank has any property or business or any other interest, to promote and protect business interests and activities, relating to Banking. He shall exercise his power bonafide and in accordance with the authority vested in him from time to time and also in accordance with the laws of India including directions issued by RBI under banking laws.

- 1. The said attorney shall have the following powers to do, act, perform and transact SINGLY :-
  - a) To receive and sign, give effectual receipts and discharges in the name of and on behalf of the Bank for all and any monies which shall come into his hands by virtue of these PRESENTS;

*[Handwritten signature]*

*[Handwritten signature]*

Cont. 2.



- k) To realise/recover the rents and profits of the said properties from the existing tenants/lessees/licenseses or occupiers;
- l) To take legal action for eviction of the defaulting tenants/licenseses and occupants etc.;
- m) To induct new tenants / lessees, licensees etc. on proper rents/profits and to execute necessary agreements and documents in this regard;
- n) To compromise/compound, appoint arbitrators, settle, abandon any suit or proceeding or action in accordance with the directions/instructions of the Board of Directors, or the Chairman and Managing Director or the Executive Director or the General Manager of the Bank as the case may be and for the said purposes execute such deeds, swear affidavits, sign vakalatnamas, petitions, instruments as may be found necessary in law;
- o) To initiate and conduct all lawful proceedings for the purposes of realisation of rents of the property belonging to or to sublet by the Bank and also for the ejectments / profits of the tenants/sub-tenants of the Bank. He shall also have the power in compliance with the instructions received from the Board of Directors, or the Chairman and Managing Director or the Executive Director or the General Manager of the Bank from time to time to compromise, settle, refer to arbitration, terminate or abandon any suit, claim proceedings or action and may likewise compound or abandon the same or delay to enforce any debt, claim or decree or recovery certificate of the Bank and do such things as are considered necessary and expedient in the interest of the Bank during the usual and ordinary course of its banking business activity;
- p) To institute, prosecute, enforce and also to defend any civil suit, writ petition, criminal proceeding, or insolvency proceeding, to file any appeal/revision arising out of the said proceedings in appropriate courts and for the said purposes sign the pleading/memo of appeal, written statements, criminal complain's etc. and also to defend said proceedings if any against the Bank by any person or body and to take all necessary steps as may appear to him just and necessary;
- q) To appear before the authorities of the Sales Tax Department, Income Tax, Revenue Authorities, Municipal Authorities, Official Liquidator, Receiver and similarly to receive any benefits such as Dividends, Refunds in any insolvency or winding up proceedings including the authorities to attend any meeting of the creditors/debtors in the winding up proceeding either personally or by his proxy;
- r) To give evidence on behalf of the Bank and also to file all necessary documents, statements, accounts, inventories, to accept service of summons, notice and other legal processes, to appoint and engage on behalf of the Bank, attorney, lawyer(s) and other legal agents as he may deem necessary;

*[Handwritten signature]*

*[Handwritten signature]*



- s) To apply for refund of spoiled stamps/stamp papers and also for stamps/stamp papers not required for use by the Bank and to obtain refund vouchers of the same;
- t) To receive and take back from the office of the Registrar or sub-registrar of assurances, documents registered in favour of and in the name of the Bank;
- u) To control and supervise over the office/branch, books, ledgers, registers correspondence, treasury, and employees and other servants of the Bank subordinate to him as designated by the Bank;
- v) To receive and pay monies in due course of banking business, on behalf of and in the name of the Bank and to give and sign receipt and to give effectual bonafide discharge of the monies thus paid and received;
- w) To take office premises or other immovable property for residential purposes on lease for and on behalf of the Bank and to execute, necessary lease deeds in favour of the Landlords and to have the same registered;
- x) To apply for, obtain and renew all licenses, permits, etc. as may be necessary or requisite for the purpose of carrying on or developing the trade or business of the Bank ;
- y) To open, operate and close accounts on behalf and in the name of the Bank, with Bank's bankers and others in India or in any other country and periodically to examine, acknowledge, settle, adjust accounts pending between the Bank and any person or persons whatsoever ;
- z) To lend and advance moneys of the said Bank on sufficient and reliable security and/or guarantee in accordance with the rules of the Bank and in compliance with the instructions and orders of the Board of Directors or the Chairman and Managing Director or the Executive Director or the General Manager of the Bank on rates of interest and terms of payment as may be determined by them from time to time;
- aa) To borrow moneys in due course of business from the Reserve Bank of India, State Bank of India or other Banks or bankers by way of overdrafts, demand loan, discount or rediscount or otherwise and to secure the repayment thereof by pledge, mortgage or hypothecation of Government Securities, Stocks, Shares, Bills or other securities or assets of the Bank and for that purpose or in connection therewith to sign, execute, register, deliver and renew all Assurances, Deeds, Promissory Notes, Bills of Exchange, Mortgages and to negotiate, endorse, assign, transfer the same.



The said attorney shall have the authority and power to do and transact any of the acts, matters and things mentioned hereunder JOINTLY with any other Power of Attorney Holder of the Bank, having and possessing the requisite power and authority conferred on him in his favour or jointly with another officer specially authorized by the bank in this behalf, through the Board of Directors or the

*[Handwritten signature]*

*[Handwritten signature]*

Chairman and Managing Director or the Executive Director or the General Manager of the Bank, or by way of express office orders issued from time to time.

- a) To bid at auction sales on behalf of the Bank in compliance with the directions of the Board of Directors or the Chairman and Managing Director or the Executive Director or the General Manager of the bank.
- b) To buy and sell silver and gold coins and bullions and currency notes of other countries in the name and on behalf of the Bank.
- c) To buy and invest moneys belonging to the Bank in Government Securities, Shares, Debentures of incorporated companies, bonds and other securities. He may further sell, assign, transfer or otherwise, dispose off the said securities and collect interest in respect of the same. He shall also have the power to receive for safe custody, sell and buy Government Securities, Bank Shares, Bonds and other securities for customers of the Bank.
- d) To sign, make, execute and do on behalf and in the name of the Bank all contracts, agreements, deeds, transfers, assignments, instruments or other things whatsoever. He shall also have the power, to renew, vary and discharge all such contracts and agreements and do all things requisite for obtaining renewal, variation and discharge thereof.
- e) To give/issue and execute guarantees, indemnities and letter of credits and/or other similar banking instruments on behalf of and in the name of the Bank in accordance with the norms and procedure laid down by RBI and the Bank from time to time.

3. General

- a) The said attorney, by virtue of these presents shall have power to act bonafide and do generally every thing requisite for all or any of the aforesaid purposes and also for any other general banking business, usually done and transacted by banks and sign on behalf and in the name of the Bank in its business interest and in the usual and ordinary course of banking business.
- b) The Power of Attorney is valid only when holder of this Attorney is in service and would automatically be suspended during the period of suspension and would cease to have effect once the services of holder of this Attorney is terminated for any reason whatsoever or after the date of superannuation.



IN WITNESS WHEREOF I, Tejendra Mohan Bhasin S/o Shri Madan Lal Bhasin General Manager of the Bank duly authorised by Resolution No. E - 4 dated 26/07/2003 Passed by the Board of Directors of the Bank, at their meeting held on 26/07/2003, have executed this document and the Common Seal of the Bank has been affixed hereunto by me and Shri Padmanabhan Sreedhar, Chief Manager Board of Directors' Secretariat has countersigned this Power of Attorney in the Presence of witnesses, who too have signed in my presence, at New Delhi on this 20th day of September 2003.

FOR ORIENTAL BANK OF COMMERCE  
*[Signature]*  
General Manager

The common seal has been affixed in my presence.

*[Signature]*  
General Manager

Countersigned by

*[Signature]*  
Chief Manager Board Secretariat

Witnesses :

1. Name, designation, Deptt. with signatures.  
Signature *[Signature]*  
Name in Block Letters : VIKRAM KALRA  
Designation : Dy. Chief Manager  
Department : Head Office

ORIENTAL BANK OF COMMERCE  
H.O. E-Block, Cona. Place, N. Lala

2. Name, designation, Deptt. with signatures.  
Signature *[Signature]*  
Name in Block Letters : SHASHI BHUSHAN  
Designation : Officer  
Department : Head Office

"I Certify that pursuant to resolution as mentioned therein the Common Seal of the Bank has been affixed and Power of Attorney has been executed by *[Signature]* and countersigned by *[Signature]*"  
By *[Signature]*  
Vikram Kalra  
Dy. Chief Manager

ATTESTED  
*[Signature]*  
NOTARY PUBLIC

20 SEP 2003

On perusal of the abovesaid documents, we observe that the Authority Letter & Power of Attorney are complete for filing the present application. It is further observed that this Application has been filed by the duly authorized person Sh. Krishan Lal Gulati. **Thus, we reject the contention raised by the respondent on account of proper authorization.**

13. In view of the abovementioned discussion, the debt and default of the Respondent has been established by the Applicant Bank beyond doubt.

14. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

15. As proposed by the Applicant, this Bench appoints Mr. Ankit Goel as IRP having Registration IBBI/IPA-001/IP- P00200/2017-2018/10390 Email ID: jk.grover27@gmail.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

*Mr. Jalesh Kumar Grover, as an IRP having Registration No. IBBI/IPA-001/IP- P00200/2017-2018/ 10390, Email ID: jk.grover27@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.*

16. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

17. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, and the IBBI by the Court Officer/Registry of this Tribunal.

18. **The Application stand admitted and disposed of accordingly.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(HARNAM SINGH THAKUR)**  
**MEMBER (J)**