

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

IA-5955/2024
IN
IB-575(ND)/2021

IN THE MATTER OF IB-575(ND)/2021:

(Under section 95 of the Insolvency and Bankruptcy Code 2016 read with rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

M/s. STATE BANK OF INDIA

Through the Resolution Professional

Smt. Reshma Mittal

IBBI Reg no.: IBBI/IPA-001 /IP-P00297/2017-18/10541

... APPLICANT/FINANCIAL CREDITOR

VERSUS

MR. RAJESH MEENA

(Personal Guarantor of the Corporate Debtor – Gallium Industries Limited)

C/o Shri Manish Sharma (Advocate)

1A-129, IInd Floor, NIT, Faridabad - 121001

... RESPONDENT/ PERSONAL GUARANTOR

AND IN THE MATTER OF IA-5955(ND)/2024:

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016)

M/s. STATE BANK OF INDIA

Through Manoj Kumar Saxena (Asst. General Manager)

Stressed Assets Management Branch-II,

11th Floor, Jawahar Vyapar Bhawan, 1,

Tolstoy Marg, New Delhi – 110001

... APPLICANT/FINANCIAL CREDITOR

VERSUS

MR. RAJESH MEENA

C/o Shri Manish Sharma (Advocate)

1A-129, IInd Floor, NIT, Faridabad - 121001

... RESPONDENT



Order Pronounced On: 08.04.2026

CORAM:

**SHRI BACHU VENKAT BALARAM DAS,
HON'BLE ACTING PRESIDENT**

**SHRI RAVINDRA CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Ankit Singal, Ms. Perna Prajapati, Ms. Kriti Bhatia, Advs.
For the Respondent : Mr. Rakesh Kumar, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Pulkit Mehrotra, Advs.
For the Resolution Professional : Mr. Harmeet Kaur in person.

ORDER

1. The present IA-5955/2024 has been filed by State Bank of India through Manoj Kumar Saxena (Asst. General Manager) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following prayers:

“a. Allow the present application and correct / amend the 'Date on which default occurred' as "15.02.2018 - date of invocation of guarantee"; and

b. Pass any such other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

BACKGROUND

2. The main application IB-575/ND/2021 is filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Personal Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 against Mr. Rajesh Meena, the Personal




Guarantor to the Corporate Debtor (Gallium Industries Limited) for an aggregate debt amount of Rs. 62,47,09,491.02/- (Rupees Sixty Two Crores Forty Seven Lacs Nine Thousand four Hundred and Ninety one Rupees and Two Paise only) including interest and Penal interest as due and payable to State Bank of India as on 31.05.2021 with respect to various loan facilities sanctioned to the Corporate Debtor (Gallium Industries Limited) by the State Bank of India, through the Resolution Professional Smt. Reshma Mittal.

3. The Applicant issued Demand Notice dated 29.06.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to Mr. Rajesh Meena mentioning the the total outstanding debt (including interest and Penalties) as Rs. 62,47,09,491.02/- (Rupees Sixty Two Crores Forty Seven Lacs Nine Thousand four Hundred and Ninety one Rupees and Two Paise only).
4. The Applicant, as per the Part III of the Section 7 application, has furnished a total debt of ₹62,47,09,491.02/- as on 31.05.2021 (including interest and penalties) and an amount in default of ₹44,66,94,317.74/- as on 30.11.2016, as reflected in the demand notice dated 01.12.2016 issued under Section 13(2) of the SARFAESI Act, along with corrigendum dated 06.02.2017, together with applicable future interest, penal interest and charges on an actual basis.

SUBMISSIONS OF THE APPLICANT

5. It is the case of the Applicant that in the main matter, IB-575/ND/2021, in Part III, the Applicant has mentioned the following dates on which default has occurred, which are extracted below:



4.	Date on which default occurred 	<ol style="list-style-type: none">1. 07.04.2017 (Sixty days from the date of Corrigendum Dt. 06.02.2017, sent subsequent to issuance of notice U/e 13(2) under SARFAESI act. On 01.12.2016).2. 22.02.2018 (seven days from the date of Invocation of Guarantee notice issued on 15.02.2018)3. On 29.06.2021, when a demand notice in terms of requirement of Rule 7(1) of the Insolvency & Bankruptcy (Application to
		<p>Adjudication Authority for Insolvency resolution process of personal guarantors to corporate debtors) Rules, 2019 was sent to the respondent/personal guarantor. Respondent submitted his reply vide letter dated 09.08.2021. However the personal guarantor failed to pay the dues within the statutory period of 14 days from the service of the said notice.</p> <p>Copy of the Demand Notice dated 29.06.2021 along with the service proof and reply submitted by the respondent is annexed herewith as ANNEXURE A-5 (Colly.)</p>

6. It has been submitted by the Applicant that due to an inadvertent error, the date on which the default occurred has been incorrectly mentioned in serial No.4 of Part III of IB-575/ND/2021.



7. It has been submitted by the Applicant that, as per the Guarantee deed dated 23.02.2015, on demand, the Respondent is liable to pay the amount due. The Notice dated 01.12.2016 and Corrigendum dated 06.02.2017 were issued to the Corporate Debtor. Thereafter, on 22.03.2017, the Corporate Debtor made certain payments with respect to the debt in question. Further, it has also been submitted by the Applicant that as per the Invocation of guarantee notice dated 15.02.2018, the Respondent/Personal Guarantor was asked to forthwith pay the amount due but he has failed to do so and defaulted in making the payment. Hence, the 'Date on which default occurred' is 15.02.2018, i.e., the date of invocation of the guarantee.
8. It has been submitted by the Applicant that mere technicality should not defeat the ends of substantive justice, and amendment ought to be allowed if it is necessary to determine the real question in controversy and amendment can be done to substantiate or expand pre-existing facts or add to facts already on record, and ought not to be refused due to some mistake or inadvertence.

ANALYSIS AND FINDINGS:

9. The Applicant is seeking to amend the date on which default occurred on the ground of inadvertent error, and the correct date on which default occurred is 15.02.2018, i.e., the date on which the guarantee was invoked.
10. On perusal of the application, it is clear that in part III of IB-575/ND/2021 at serial no. 4, which speaks of particulars of the date on which the default occurred, the Applicant has mentioned three different dates, being:
 - a. 07.04.2017 (Sixty days from the date of Corrigendum dated 06.02.20217, sent subsequent to issuance of notice u/s 13(2) under the SARFAESI Act, on 01.12.2016.



- b. 22.02.2018 (Seven days from the date of the Invocation of Guarantee notice issued on 15.02.2018)
- c. On 29.06.2021, when a demand notice in terms of the requirement of Rule 7(1) of the Insolvency & Bankruptcy (Application to adjudication Authority for Insolvency resolution process of personal guarantors to corporate debtors) Rules, 2019 was sent to the respondent/personal guarantor.
11. The Applicant in the present Application has prayed that “15.02.2018” is to be treated as the date on which default has occurred. The guarantee was invoked vide Letter No. SAMB II/CLO-I/SLM/2017-2018/974,976,975 dated 15.02.2018. The relevant paragraphs of the said letter is reproduced hereunder:
4. (ii) By the aforesaid Guarantee Agreement dated 23/02/215, each one of you have agreed as under:
- a) The Guarantor shall forthwith on demand made by the Bank deposit with the Bank such sum or security or further sum or security as the Bank may from time to time specify as security for the due fulfillment of their obligations under this Guarantee and any security of deposited with the Bank may be sold by the bank after giving to the Guarantors a reasonable notice of sales and the said sum or the proceeds of the sale of the securities may be appropriated by the Bank in or towards satisfaction of the said obligations and any liability arising out of non-fulfillment thereof by the Guarantors.
5. In the above premises, we hereby invoke the personal guarantee given by you and call upon each of you and demand from each one of you to pay forthwith to State Bank of India, SAMB-II Branch, New Delhi sums aggregating Rs. **49,04,66,519 (Rupees Forty Nine Crores, Four Lac, Sixty Six Thousand Five Hundred Nineteen Only)**, as per details given in Annexure I of this letter. together with further interest thereon with effect from 1st February 2018 at the given contractual rates, upon the footing of compound interest until payment/ realization failing which Bank will be constrained to take legal action against you.
- Please note that this notice is issued to you without prejudice to our rights and remedies against the Borrower.
12. A plain reading of paragraphs 4 and 5 of Letter No. SAMB II/CLO-I/SLM/2017-2018/974, 976, 975 dated 15.02.2018 demonstrates that the Guarantor was liable to make payment on demand and that the Applicant invoked the guarantee on 15.02.2018 while simultaneously



demanding payment of the outstanding amount, which date has also been disclosed in Part III of Application bearing IB-575/ND/2021. Although serial no. 4 of the Application reflects 22.02.2018 as the date of default, ostensibly upon considering a period of 7 days, the said period does not find mention in the contents of the aforesaid letter. Accordingly, it is reasonable to construe that the date of default is the date of invocation of the guarantee itself, i.e., 15.02.2018.

ORDER

13. In view of the above facts and circumstances and the foregoing discussion, we find force in the submissions and the argument advanced by the Applicant.
14. The prayer(s) sought in the present application is hereby allowed.
15. Accordingly, **IA-5955/2024 in IB-575(ND)/2021** shall stand **disposed of**.

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
HON'BLE ACTING PRESIDENT