IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
IB-308/ND/2024
IA-28/ND/2025

IN THE MATTER OF:
Ashutosh Garg
R/o LTH3 PH1,
The Laburnum, Sushant Lok-1,
Gurugram-122002(Haryana)
gargashutosh@gmail.com ... **Financial Creditor**

Versus

M/s. Guardian Lifecare Pvt. Ltd.
Through its Director
Mr. RajsekarKuppuswami Mitta,
Registered Office at
WZ-56, Second Floor Ram Nagar,
Tilak Nagar, New Delhi-110018.
guardianlifecare88@gmail.com ... **Corporate Debtor**

AND IN THE MATTER OF IA NO. 28/ND/2025:
BHARAT BHUSHAN SETHI
INTERIM RESOLUTION PROFESSIONAL
G-21, SAKET, SOUTH DELHI-110017
IBBI REG. NO.- IBBI/IPA-002/IP –N00650/2018-2019/12034
FOR M/S GUARDIAN LIFECARE PRIVATE LIMITED
PHONE: - 7838171708
EMAIL: BBSETHI.ADV@GMAIL.COM ... **Applicant**

Under Section: 7 of the IBC, 2016

Order delivered on 03.09.2026

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:
For the Applicant :
For the Respondent :
For the RP : Mr. Bharat Bhushan Sethi (RP)

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-28/ND/2025: The prayer made in the captioned application reads thus:-

1. Pass an Order for liquidation of the Corporate Debtor i.e. M/s Guardian Lifecare Private Limited as resolved by the Committee of Creditors in its 7th meeting held on 26.06.2025 in accordance with Section 33 (1) of Insolvency and Bankruptcy Code, 2016

2. Appoint an Insolvency Professional to act as Liquidator of the Corporate Debtor from the panel list of insolvency professionals as being maintained and provided by Insolvency & Bankruptcy Board of India.

3. Pass an order that the order of Liquidation is a notice of discharge to the employees, officials, workmen etc,

4. Allow the applicant to continue rendering his professional services as Resolution Professional *"Functus Officio"* till such time a final order of Liquidation is passed by this Hon'ble Tribunal

2. Our attention is drawn to the Resolution passed by the CoC in its 7th Meeting, deciding to liquidate the Corporate Debtor. It is recorded in the Resolution that the plan value was Rs. 31 Lakhs and it does not envisage a situation where total CIRP cost may be met. The relevant excerpt of the Resolution reads thus:-

ITEM NO.5

TO DISCUSS AND APPROVE THE RESOLUTION PLAN SUBMITTED BY Ms. SONAL SUMIT MEHTA

The RP team member apprised that as discussed in previous item, undersigned received final resolution plan from Ms. Sonal Sumit Mehta on 23.06.2025 and same was circulated along with the notice of the meeting.

The matter was placed for discussions. RP team stated RA has increased their offer from Rs. 30 Lakhs to Rs. 31 Lakhs. Further, the amount of CIRP Cost will be deducted first out of the resolution plan amount and thereafter, the balance amount shall be paid to the creditors. RP team also highlighted that that on persual of the same it was noticed that plan does not envisage a situation where total CIRP Cost may come out to more than Rs. 31 Lakhs, total amount proposed in the resolution plan. RP further informed that as of now, total CIRP cost is about

"Dear Sir

This is to clarify that if CIRP cost exceeds 31 lacs then we will pay CIRP cost at actuals.

if cirp cost is less than 31 lacs then cirp cost at actuals shall be paid and balance amount post adjustment of CIRP costs hall be made available to stakeholders as proposed in plan."

Copy of the email received from RA is attached herewith.

In terms of Section 30 of the Code, above resolution required of voting of at least 66% in favour of the proposed resolution in order to get it passed. It was discussed that voting shall be taken through e-voting. E-voting began on 28.06.2025 and ended on 30.06.2025 at 5 PM. Following are the results of voting:-

Rs. 13 Lakhs and it is expected to be around Rs. 18 Lakhs – Rs. 21 Lakhs till the completion of CIRP.

The matter was placed for discussions. Representative of GST Department stated that the amount offered in the resolution plan is very less despite the fact that corporate debtor has almost similar amount of liquid assets. Further, the RA is deducting amount of CIRP cost from the allocation made for creditors and because of this, they are not sure of the amount which they will get under the resolution plan. It was also discussed that corporate debtor also has some brought forward business losses also. Representative of GST Department stated that they are not in favour of the resolution plan. Thereafter, following resolution was placed before CoC for its approval: -

"Resolved that having considered feasibility and commercial viability, the Resolution Plan proposed by Ms. Sonal Sumit Mehta for Guardian Lifecare Private Limited be and is hereby approved".

"Further Resolved that Mr. Bharat Bhushan Sethi, resolution professional be and is hereby authorised to file application for approval of resolution plan before Hon'ble Adjudicating Authority."

To avoid any ambiguity, after the meeting RP sent an email to RA clarifying their stand on the issue of CIRP Cost. Following is the reply received from RA: -

S. No.	Name of CoC Member	Voting Share %	Yes	No	Abstain
1.	Sales Tax Department, New Delhi	87.57%	-	87.57%	-
2.	Rikky Gupta	5.83%	5.83%	-	-
3.	R. Khandelwal & Associates	3.16%	-	3.16%	-
4.	Ananya Singh	1.55%	-	-	1.55%
5.	Sunita Khandelwal & Associates	1.90%	-	1.90%	-
	Total	**100%**	**5.83%**	**92.63%**	**1.55%**

In terms of Section 30 of the code, above resolution was required to be passed with at least 66% majority. CoC members holding 5.83% voting share only voted in favour of the meeting Hence, this resolution failed and could not be passed. Now, the Resolution Professional shall file the application for initiation of liquidation process of corporate debtor.

3. It is conceded by the Ld. Counsel for the Applicant viz. RP that Mr. Ashutosh Garg, who filed the petition under Section 7 of IBC, 2016, happened to be Director qua the Corporate Debtor viz. M/s. Guardian Lifecare Private Limited. The total amount of debt allegedly defaulted to be paid as mentioned in the application was Rs. 1,09,25,296.50. The Corporate Debtor instantly

accepted the liability to pay the debt. The relevant excerpt of the order dated 05.09.2024 reads thus:-

As can be seen from the Part-IV (1) of the application, the Corporate Debtor has defaulted to pay an amount of Rs. 1,09,25,296.50/-. The date of default as mentioned in the application is 31.12.2023. Ld. Sr. Counsel for the Petitioner could draw our attention to the NeSL report placed on record as Annexure-14 to the application. Part (d) of the NeSL report as available in the petition reads thus:

Default Details			
Date Of Default	23/02/2024	Days Past Due	80
Default Amount	10216340.50	Total Outstanding Amount	10216340.50
Date of Last AOD	31/03/2024		

2. The liability is not disputed and has been duly authenticated. After hearing the parties, we had passed an order dated 12.06.2024 calling upon them to file an affidavit specifically stating therein that the petition is not a collusive one. The order reads thus: -

"Ld. Counsel for the Applicant could draw our attention to NeSL report to espouse that the default has been committed by the Corporate Debtor in repaying the amount of debt. Issue notice. Mr. Gupta, Ld. Counsel for the Corporate Debtor accepts notice and seeks an opportunity to file reply within one week. Both the Petitioner and Respondent are directed to file a specific affidavit that the present petition is not the collusive one and has not been filed for reasons and with ulterior motive. Let the affidavit be filed within one week.

List on 02.07.2024."

3. In compliance of the aforementioned order, the Petitioner namely Ashutosh Garg filed an affidavit dated 19.06.2024. Relevant excerpt of the affidavit reads thus: -

"That the Deponent submits that the present Petition is neither collusive nor a malafide one nor has been filed for ulterior purposes. The same is absolutely bonafide and filed as per the provisions of Insolvency & Bankruptcy Code, 2016."

4. The Corporate Debtor has also filed a separate affidavit dated 18.06.2024. In para 4 of the affidavit, it accepted its liability to pay the amount of debt to the Petitioner and submitted that a default had occurred regarding the same. Para 4 of the affidavit reads thus: -

"That I state that the liability of the Corporate Debtor to our other Director Mr Ashutosh Garg is not disputed. I say that Mr Ashutosh Garg has paid the liabilities of M/s. Guardian Lifecare Pvt Ltd at the time of the need by the Company and in the process has paid a sum of Rs. 1,09,25,296.50 for meeting the liabilities of the Company, as is verifiable from the records of the Corporate Debtor, as maintained by it in the normal course of business. I state further that the Corporate Debtor is not doing any business activity today and has not engaged in any business activity for the past 8 years. There are no assets or revenues in the Corporate Debtor to be able to repay to Mr Ashutosh Garg the above amount, which forms part of the liability of the Company i.e. M/s. Guardian Lifecare Pvt. Ltd. I state that this stand of the Company is a correct statement based on the records maintained by the Company."

Apparently, both the Creditor and Corporate Debtor were *ad idem* on the issue that the circumstances warranted admission of the application.

4. A perusal of the para 5 of the application reveals that Mr. Ashutosh Garg, Suspended Director qua the Corporate Debtor who initiated the process, submitted his claim for Rs. 1,09,25,296.50 and other claims for meagre amounts are by Rikky Gupta, R Khandelwal & Associates, Ananya Singh and Sunita Khandelwal & Associates. The para 5 of the application reads thus:-

5. That pursuant to the publication of public announcement, the Applicant had received claims from 1 Financial Creditor and 4 Operational Creditors as on the last date for submissions of claim. The applicant received no claim in the category of Employees or Workmen up to the last date for submissions of claim. Following are the details of claims received and admitted: -

Financial Creditors:

S. No.	Name of Creditor	Amount Claimed	Amount Admitted (Rs.)
1.	Mr. Ashutosh Garg (Related Party)	1,09,25,296.50	1,09,25,296.50

Operational Creditors:

S. No.	Name of Creditor	Amount Claimed	Amount Admitted (Rs.)
1.	Rikky Gupta	4,70,000	4,70,000
2.	R. Khandelwal & Associates	2,55,100	2,55,100
3.	Ananya Singh	1,25,000	1,25,000
4.	Sunita Khandelwal & Associates	1,52,930	1,52,930

The claim by GST Department is for an amount of Rs. 70,64,132, Para 10 of the application wherein the amount is mentioned reads thus:-

> 10. That thereafter, applicant has received an additional claim from GST Department in Form C along with supportive documents and after verification of the documents, the applicant has admitted the claim of GST Department for an amount of Rs. 70,64,132.

5. Indubitably, the Corporate Debtor has no assets except, the liquidated/cash amount of Rs. 19,17,000/- (Approximately). The Liquidation is a process in which the Liquidator has to dispose of the assets of the Corporate Debtor and recover the dues payable to the Creditors.

6. In the present case there are no such assets which need to be disposed of and liquidated. The only amount of Rs. 19,17,000 (Approximately) is lying in the Fixed Deposit. The Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 provides for payment of fees of the Liquidator. The Regulation reads thus:-

> ***4. Liquidator's fee.***
>
> *(1) The committee may fix the fee of the liquidator in the first meeting after the appointment of liquidator during the liquidation process, in accordance with sub-section (8) of section 34.*
>
> *(2) If the committee has not fixed the fee under sub-regulation (1), the fee as a percentage of the amount distributed to the stakeholders, for the balance period of liquidation, will be as under:*

Amount of Distribution (In rupees)	Percentage of fee on the amount distributed		
	in the first six months	in the next six months	thereafter
Amount Distributed to Stakeholders (exclusive of liquidation costs)			
On the first 1 crore	5.00	4.00	2.0
On the next 9 crore	4.00	3.00	1.50
On the next 40 crore	2.50	2.0	1.0
On the next 50 crore	1.25	1.0	0.50
On further sums realized	0.25	0.20	0.10

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Fourth Amendment) Regulations, 2026.]

7. The CIRP and Liquidation Process are not only time consuming mechanism, but also involve incurring the cost, required to be met from the assets of the Corporate Debtor. In the present case, we are unable to appreciate that what purpose could be achieved by ordering liquidation when the Corporate Debtor has no assets.

8. The dues payable to GST is next highest after Mr. Ashutosh Garg, who initiated the CIRP, also give rise to the semblance of suspicion that the initiation of CIRP, in itself, was a managed affair. The suspicion is strengthened by the fact that Mr. Ashutosh Garg happened to be Director qua Corporate Debtor and the Corporate Debtor instantly conceded his plea (Supra).

9. One may wonder that, how could we admit the application? The answer is in Section 7(5)(a) of IBC. Once the requirement of the provision is found satisfied, we too have to order commencement of CIRP. However, once it has transpired that there was no position to revive the Corporate Debtor, about which the FC, who happened to be Director of CD, was expected to be aware

of and the GST dues are high, we are left with no doubt that the Director of the company initiated the process to get rid of the statutory dues.

10. The record reflects that the process was initiated in a collusive manner, and for extraneous reasons. It is not for us to go into the reasons at this stage, but one apparent reason appears to be the dues payable to GST Department. In the totality of the facts, we are not inclined to grant the reliefs sought in the application and deem it appropriate to recall the order of CIRP and restore the Company to the position in which it was there at the time of initiation of the process. The Company would be liable for all the liabilities *dehors* the CIRP and would be free from the rigors of the process. It would be open to GST Department to recover its dues by following due process of law.

11. Issue notice under Section 64A read with Section 65 of IBC, 2016 to Mr. Ashutosh Garg and M/s. Guardian Lifecare Private Limited to show cause as to why the process should not be initiated against them in terms of the said provisions. Let the notice be served upon them by the RP by all prescribed modes viz. registered post, speed post, courier service and email. Let response to notice be filed by Mr. Ashutosh Garg and the Company within four weeks from today. List on 16.10.2026. As the Company has been released from all the rigors of the CIRP, it goes without saying that it would not be entitled to benefit of any relief under Section 14 of the Code. Subject to the aforementioned, the application stands disposed of.

Sd/-
(ATUL CHATURVEDI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Abhijat/Esha