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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 914/2026</u>**

GULSHAN KUMAR GUPTA .....Petitioner

Through: *Appearance not given.*

versus

SECURITIES AND EXCHANGE BOARD OF INDIA & ANR. .....Respondents

Through: Mr. Ashish Aggarwal, Mr. Himanshu Singh, Mr. Rahul malik, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **22.01.2026**

1. The petitioner in the instant petition is aggrieved by paragraph no. 30 of the Impugned Order dated 19.06.2025 and seeks directions to the respondent to release and pay to the petitioner professional remuneration @ ₹2,00,000/- per month for the period of 34 months as minimum fee along with interest thereon from the date of accrual till actual payment and applicable GST.

2. The facts appear to be that the Securities and Exchange Board of India ('SEBI') *vide* letter no. NRO/Rec/En Aromatic/1331/2019 dated 31.05.2019 appointed the petitioner as an Administrator in the matter of En Aromatic and Petro Chemicals Limited under the SEBI (Appointment of Administrator and Procedure for Refunding to Investors) Regulations, 2018 ("**Administrator Regulations**"). It appears that pursuant to the

appointment, the petitioner discharged his functions for about 34 months. He conducted site visits, interacted with authorities, submitted detailed progress reports, recommended valuation and forensic audits, and rendered continuous assistance to SEBI in its recovery proceedings. It appears, however, that after repeated non-approvals by the concerned Debt Recovery Officer of the proposals for forensic and valuation audit, the recovery proceedings could not be taken to its logical conclusion.

3. The SEBI, thereafter, *vide* order dated 09.03.2022 withdrew the petitioner's appointment without settling his remuneration and expenses. The petitioner then submitted various representations for payment of his remuneration. Since, no action was taken, the petitioner had to approach this Court in W.P.(C) 5363/2025. The SEBI, therefore, was directed *vide* order dated 25.04.2025 to consider the petitioner's claim for remuneration by way of a reasoned and speaking order.

4. In compliance of the said directions, the Impugned Order dated 19.06.2025 came to be passed.

5. The Impugned Order passed by the Recovery Officer, SEBI (Northern Regional Office) in Recovery Certificate No. 1010 of 2016 basing its reasons on the terms of the Administrator Regulations and SEBI's circular dated 02.04.2019 dealing with the "*Empanelment of Insolvency Professions (IPs) to be appointed as Administrator, remuneration and other incidental and connected matters*" (hereinafter "**said Circular**"). A perusal of the said Circular indicates that remuneration and incidental expenses of the Administrator are linked to realization and distribution of assets, and form part of the "*costs of administration*".

6. A perusal of the said Circular evinces a conscious and deliberate

scheme. Clause 6(a) of the said Circular provides that remuneration payable to the Administrator shall be in accordance with Regulation 4(3) and (4) of the IBBI (Liquidation Process) Regulations, 2016 read with the Tables in Part-I of the Schedule, which prescribe fees primarily on the basis of realisation and distribution. Clause 6(b), thereafter, clarifies that "*fees for distribution*" shall not apply in cases of recovery of fees, penalties and disgorgement; and Clause 6(d) expressly states that the overall remuneration shall be treated as the costs of administration under Regulation 11 of the Administrator Regulations. Furthermore, Clause 6(c) provides that fees of professionals and incidental expenses are payable only as part of the overall remuneration connected with administration and recovery. Clauses 7 and 8, then, indicate that valuation, forensic audit and appointment of agencies is required to be done through a process of tender.

7. The said Circular does not provide for payment where no assets are realised or distributed, and it also does not confer any vested right to continue, as Clause 5 in particular, and the general scheme of the said Circular reveals, the appointment is at SEBI's discretion, consistent with later policy decision of SEBI to withdraw the services of all Administrators.

8. The Impugned Order, also, in light with the discussion above, has analysed the *lis* herein appropriately, in light of the Administrator Regulations and the said Circular. The material portion of the Impugned Order reads as under:

> *23. With regard to making payment of the incidental expenses incurred by Mr. Gulshan Kumar Gupta, I note that he had incurred expenses amounting to Rs. 9,285/- for the period from June 20, 2019 to August 31, 2019. The said expenses consist of payment of fees to MCA for inspection of documents of the defaulter, conveyance charges, stay charges, etc. The said expenses were incurred by him while performing the duties as an*

Administrator in the matter. In this regard reference is drawn to letter dated August 29, 2019 issued to Mr. Gulshan Kumar Gupta wherein following clarification interalia was issued:

"(i) Payment of routine expenses / arrangement of advance:

It may be noted that SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 and circular dated April 2, 2019, do not provide any initial expenses. Therefore, any payment has to be made only on reimbursement basis, after production of bills and recoveries already made and amount distributed. Hence only reimbursement of expenses is permissible.

However, Administrators may use SEBI's available resources for valuation, publications of tenders, auction of properties etc. rather than incurring expenses on themselves."

24. On perusal of the said letter, I note that it was clearly communicated to Mr. Gulshan Kumar Gupta that the payment of initial expenses will be made on reimbursement basis only after production of bills provided that the amount has been realized and distributed to the investors.

25. Further, I note that as per terms of clause 6(c) of SEBI circular dated April 02, 2019, incidental expenses shall be payable on actual basis subject to a maximum of 25% of the fees payable to the Administrator under Table 1 of Part-I and Part III of the Schedule, which is reproduced below.

26. In the instant case, I note that there was no valuation and auction of properties conducted in the matter till the withdrawal of appointment of Mr. Gulshan Kumar Gupta as an Administrator by SEBI. Since the Administrator had not realized any assets of the Defaulters, the question of reimbursement of expenses incurred does not arise.

27. With regard to placing on record the complete information and documents concerning appointment of the petitioner as an Administrator and withdrawal of such appointment, I note that necessary documents with regard to appointment and withdrawal of Mr. Gulshan Kumar Gupta as an Administrator have already been provided by SEBI.

28. I note that Mr. Gulshan Kumar Gupta was appointed as an Administrator in terms of the Administrator Regulations. On perusal of the progress reports submitted by him during the tenure of his appointment, I find that he has done his work diligently and has endeavored to assist SEBI in the recovery proceedings. However, I observe that despite such efforts, the recovery proceedings could not be taken to its logical conclusion.

29. I note that SEBI had reviewed the efficacy of engaging the Administrators in recovery proceedings initiated by SEBI under section 28A of the SEBI Act, 1992. It was based on this review that a policy decision interalia was taken to withdraw the services of Administrators and not to appoint them henceforth.

30. In view of the aforesaid facts and circumstances of the case, and taking into consideration the terms and conditions of appointment letter dated May 31, 2019, issued to the Administrator and the aforesaid provisions of

> *Administrator Regulations read with circular dated April 2, 2019, since no asset was realized by the Administrator till the date of withdrawal of his appointment, his prayer for payment of suitable remuneration for his tenure of about 34 months and reimbursement of expenses incurred as Administrator is rejected."*

9. Having considered the facts and circumstances of the case, the rule and law applicable therein, the analysis undertaken in the Impugned Order, the Court does not find any reason to interfere with the Impugned Order. In absence of any realization, the petitioner was not entitled to any remuneration, this is the scheme of the said Circular, with which SEBI and the petitioner is bound. The Court cannot direct SEBI to act contrary to the applicable circular.

10. In the absence of there having been conferred upon the petitioner, a right to remuneration, this Court under Article 226 of the Constitution of India cannot create a right, and enforce it in favour of the petitioner and against the respondent.

11. The petitioner having failed to establish, under the application circular and regulations, a right to remuneration, despite the concerned assets not having been realised, there is no reason to interdict the Impugned Order.

12. In view of the aforesaid, the instant petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 22, 2026
Nc/ ksr