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

+ W.P.(C) 3174/2016 & C.M.Nos.13621-13622/2016

APEX FRP CHEMICALS

PRIVATE LIMITED AND ANR

..... Petitioners

Through Mr.Saurabh Kalia with Mr.Harshit
Agarwal, Advocates.

versus

OM PRAKASH GUPTA AND ORS

..... Respondents

Through Mr.Ankit Singal, Advocate for R-1.

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Date of Decision: 18th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging order dated 24th April, 2015 passed by Company Law Board (CLB) whereby petitioners' application under Section 8 of Arbitration and Conciliation Act, 1996 has been dismissed.

2. Learned counsel for the petitioners states that Articles of Association of petitioner no. 1-Company clearly provide that all disputes pertaining to the affairs of the petitioner no. 1-Company shall be referred to arbitration. He further submits that if an Arbitrator could settle the disputes, then the matter under Sections 397 and 398 of the Companies Act should be referred to arbitration.

3. However, this Court is of the view that here petitioner is invoking a statutory remedy which is in addition to the contractual remedy. Moreover, under Section 397(2)(b) of the Companies Act, 1956, Company Law Board has to come to a conclusion that a case for winding up is made out, prior to granting any relief. In *Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd.*, (1999) 5 SCC 688 the Supreme Court has held that arbitration clause is not attracted to winding up proceedings.

4. It is also settled law that under Sections 397 and 398 of the Companies Act, relief can be granted even contrary to any Articles of Association, which an Arbitrator cannot do as he is a creature of the contract i.e. Articles of Association.

5. Consequently, the present writ petition being bereft of merit is dismissed along with the applications.

APRIL 18, 2016
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MANMOHAN, J