

(2016) 04 DEL CK 0101

In the Delhi High Court

Case No : W.P. (C) 3174 of 2016 and C.M. Nos. 13621-13622 of 2016.

Apex F.R.P. Chemicals Private Limited and another

APPELLANT

Vs

Om Prakash Gupta and Others

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Companies Act, 1956 — Section 397, 398

Citation : (2016) 230 DLT 4

Hon'ble Judges : Manmohan, J.

Bench : Single Bench

Advocate : Saurabh Kalia and Harshit Agarwal, Advocates, for the Appellant;
Ankit Singal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J. (Oral) - 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. v. 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.