JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

F.A.O No.47 of 2015

Associated Press of Pakistan Corporation
Vs.
M/S ACSYS Company Limited

Appellant by:	Mr. Husnain Haider Thaheem, Advocate.
Respondent by:	Syed Zulfiqar Abbas Naqvi and Mr. Mudassar Hussain Malik, Advocates.
Date of Hearing:	**24.02.2025.**

INAAM ANEEN MINHAS, J:- Through the instant appeal, the appellant has assailed the order dated 29.04.2015 **("Impugned Order")**, passed by learned Civil Judge 1st Class, Islamabad-West **("Trial Court")**, whereby application u/s 20 of the Arbitration Act, 1940 filed by the appellant was dismissed.

2. Brief facts relevant for the disposal of the instant appeal are that the appellant being a corporation and successor-in-interest to Associate Press of Pakistan **("APP")** having a state owned news agency which was fully owned and controlled by Federal Government had re-named as Associated Press of Pakistan Corporation through Ordinance L-XXX of 2002. In pursuance of the said ordinance all rights and liabilities arising from agreements contracts transactions, which were executed by APP vests in the appellant corporation by operation of law and any reference to the appellant herein-after shall mean to include and construe as reference to APP; that on 01.02.1996 APP entered into a legally binding contract with the respondent for supply of

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equipment/machinery its installation, maintenance and commissioning of satellite communication system. At the time of execution of the contract, it was agreed that entire project was to be completed/commissioned within eight weeks of the 1st payment made to the respondent APP. First payment of Rs.59,00,000/-was made to the respondent on its demand on 08.02.1996 and as such completion of work was to be made till 08.04.1996. Another amount of Rs.29,50,000/- was made by APP to the respondent. Against the agreed time for completion of the project the respondent supplied certain equipment for installation of APP Karachi on 17.12.1996, APP Islamabad on 01.01.1997, APP Lahore on 16.12.1996, APP Quetta on 11.12.1996 and thus provided only 20 satellite links on experimental basis. Even negligible fraction of the contracted work executed by the respondent did not confirm to specification agreed in the contract and was not at all commissioned due to use of substandard equipment and lack of expertise on the part of the respondent. APP repeatedly reminded the respondent to remove the defects in the executed work with regard to agreed specification and to complete the project and also apprised the respondent of losses and damages it was suffering and was to suffer in future yet despite false promise, illusive offers and commitments, needful was never done as a consequence of which APP was made to sustain heavy loss. APP called upon the respondent to render accounts of payment received and goods supplied for the fractional part of the contracted work as well as compensate it for financial losses as well as loss to the goodwill. In order to settle the matters pertaining to liquidated damages contract dated 01.02.1996 provides arbitration

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clause. APP requested the PTA, which has how know of the satellite communication to act as an arbitrator, therefore, APP filed application u/s 20 of the Arbitration Act, 1940 for the appointment of Arbitrator before Trial Court.

3. The respondent vehemently resisted the application by filing written reply and prayed for dismissal of the same. Following issues were framed to decide the application:-

ISSUES

1. *Whether dispute between the parties arising out of an arbitration agreement dated 01.02.1996 may be referred to the sole arbitrator as per terms of clause-18 of general condition of said contract agreement?OPA.*

2. *Whether application u/s 20 of Arbitration Act 1940 dated 19.02.2003 and claims are time barred? OPR.*

3. *Whether application in hand is not maintainable in its present form? OPR.*

4. *Relief.*

4. After framing of the issues both the parties produced their respective evidence and after hearing the arguments, Trial Court dismissed the application u/s 20 of the Arbitration, Act, 1940, hence this appeal.

5. Learned counsel for the appellant contended that the appellant successfully discharged the onus of issue No.1 that Arbitrator can be appointed in terms of clause 18 of the agreement but Trial Court concluded otherwise; that the Impugned Order is result of misreading and non-reading of evidence as such liable to be set aside.

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6. On the other hand, learned counsel for the respondent resisted the instant appeal and contended that Trial Court has appreciated the evidence in its true perspective and passed the Impugned Order in accordance with law.

7. I have heard learned counsel for the parties and gone through the record with their able assistance.

8. From perusal of the record, it transpires that the respondent took a specific plea of limitation in respect of the claim of the appellant, therefore, Trial Court with regard to limitation framed issue No.2 and decided the same first as being pivotal. To prove this issue both the parties produced the following oral as well as documentary evidence:-

Appellant side.

i. Syed Zulfiqar AW-1
ii. Muhammad Ghaus/Director IT(APP) appeared in the witness box as AW-2
iii. Documentary evidence. Exh.A1 to Exh.A15, Mark-A to Mark-F.

Respondent side.

i. Ghulam Shabbir, RW-1,
ii. Imran Qureshi as RW-2,
iii. Documentary evidence Ex.R1 to Ex.R3, Mark-A & Mark-B.

9. It is an admitted fact that the appellant, through letter dated 08.04.1997 (Exh.R1) formally terminated the agreement. Subsequently, in April 2002, a letter was received from the Pakistan Telecommunication Authority (PTA) regarding the appointment of an arbitrator. The period prescribed for the appointment of an arbitrator had already lapsed as pointed out by learned counsel for the respondent.

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Furthermore, the appellant neither reinstated the agreement nor withdrew the termination letter dated 08.04.1997 (Exh.R1). Ghulam Shabbir, RW-1 during cross-examination remained consistent and nothing favorable to the opposing party was extracted, rather he reaffirmed his statement made in his examination-in-chief. Additionally, it is an undisputed fact that the appellant terminated the agreement through letter Exh.R1. During cross-examination, Syed Zulfiqar AW-1 explicitly admitted that the said letter (Exh.R1) was neither revoked nor the appellant reinstated the agreement. Notably, the agreement was terminated in 1997, whereas the application for appointment of arbitrator was filed on 18.02.2003. This clearly indicates that the petitioner filed the application u/s 20 of the Arbitration Act beyond the limitation period of three years as outlined under Article 181 of the Limitation Act, 1908. Reliance is placed upon ***JS Global Capital Limited vs. Mrs. Raheela Yahya*** **(2021 CLC 1414).**

10. In view of the above discussion, no illegality, misreading or non-reading of evidence has been found in the Impugned Order and Trial Court has properly appreciated the evidence and applied the law. The Impugned Order has been passed in accordance with law, which does not call for interference by this Court. Consequently, the instant appeal is **dismissed.**

(INNAM AMEEN MINHAS)
JUDGE

Announced in open Court on 28.02.2025.

JUDGE

R.Anjam

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