

**SYNOPSIS OF THE ORDER DATED 17TH January, 2014 PASSED BY THE
COMPETITION APPELLATE TRIBUNAL ALONG WITH OUR COMMENTS IN**

Appeal No.03/2013

(Under Section 53B of the Competition Act, 2002 against the order dated 7.11.2012 passed by the Competition Commission of India in Case No.51/2012.)

CORAM

**Hon'ble Justice V. S. Sirpurkar
Chairman**

**Hon'ble Shri Rahul Sarin
Member**

**Hon'ble Smt. Pravin Tripathi
Member**

In the matter of :

Accreditation Commission for Conformity Assessment Body Pvt. Ltd. ... Appellant

Versus

Quality Council of India and Ors. ... Respondents

1. Quality Council of India/National Accreditation Board for Certification Bodies
2. National Accreditation Board for Testing and Calibration Laboratories,
3. Secretary, Ministry of Commerce and Industry
4. Secretary, Department of Industrial Planning and Policy
5. Secretary, Department of Science and Technology
6. Secretary, Ministry of Micro, Small and Medium Enterprises

7. Secretary, Ministry of Food Processing Industries
8. Secretary, Ministry of Railways
9. CEO, Food Safety and Standards Authority of India
10. Secretary, Ministry of Environment and Forest
11. Secretary, Ministry of Petroleum and Natural Gas
12. Secretary, Ministry of Health and Family Welfare

Appearances < Shri M.M. Sharma, Ms. Deepika Rajpal and Shri Vaibhav Chouskse, Advocates for the Appellant

Shri Sumit Babbar (R9), Shri R.M. Sharma (R11) and Ms. Sandhya Kohli, Advocates for the Respondents

Shri Mayank Bansal, Advocate with Dr. Shabistan Aquil, DD(Law, CCI) for the CCI

1. This is an appeal against the order passed by the Competition Commission of India u/s 26(2) of the Competition Act (in short Act) closing the information laid before it by the present appellant.

It was informed by the informant that it was a private limited company incorporated to engage in the business of accreditation of certification bodies, inspection bodies, testing & calibration laboratories, medical laboratories, diagnostic centres & blood banks, etc. operating in India. The informant joined as many as 14 respondents to its information, as mentioned in the cause title.

It was submitted in the information that OP 1 (QCI/NABCB) and OP 2 (NABL) were autonomous bodies under the aegis of Department Science and Technology, established to provide the government, regulators and the industries with the scheme of laboratory accreditation through third party assessment for formally recognising the technical competence of laboratories in accordance with the International Organization for Standardization (ISO). It was then stated in the information that OP 1 (QCI/NABCB) and OP 2 (NABL) were against the business of accreditation and conformity assessment in India.

1. Page No. 04, Para – 5: QUOTE” It will be at this stage interesting to consider the prayers made by the informant before the CCI –

“1. That by a permanent order and direction of the Hon’ble Commission to all Respondents to accord recognition of accreditation services provided by the Complainant along with and on par with the Respondent No.1 and 2 in their official communication/s and publication/s for the purposes of various recognition, benefits, incentives, subsidies, purchases, contract, procurements, tendering, expression of interests, bidding documents and schemes and national and international forums/representations.

2. That by a permanent order and directions of the Hon’ble Commission to all Respondents and various departments (central & state) to create a level playing field for the Complainant viz-a-viz the Respondents 1 & 2.

3. That by a permanent order and direction of the Hon’ble Commission to all Respondents and various Government departments to use correct normative references such as ISO17021 or ISO 17020, ISO 17025, ISO 15189 Accreditation instead of ‘NABCB/NABL Accreditation’.

4. That by a permanent order and direction of the Hon’ble Commission to all Respondents and various Government department be called upon to issue amendments/corrigendum in their relevant notifications/orders/ instructions/ circulars/memos whereby the Respondent Nos.1 & 2 and the Complainant are designated/nominated as equivalent in terms of relevant accreditation services. And therefore, the services rendered by Respondents No.1 & 2 are not exclusive in the relevant market.

5. That by a permanent order and direction of the Hon’ble Commission to all Respondents to refrain from taking any such actions or steps which could in any way undermine, limit or restrict the Complainant in the relevant market that could be violative of the provisions of the Competition Act of India.

6. That by an order and direction of the Hon'ble Commission the Respondents No.1 & 2 be penalized as per the provisions of the Competition Act of India for abuse of dominant position and anti competitive agreements/arrangements.

7. That by an order and direction of the Hon'ble Commission the Respondents No.1 & 2 be called upon to provide adequate monetary compensation to the Complainant for preventing and denying the Complainant the access to the relevant market that has resulted in loss of pecuniary nature to the Complainant.

8. Pass such other and further order as the Hon'ble Commission may deem fit and proper in the circumstances.”

OUR COMMENT: The Hon'ble Competition Appellate Tribunal (COMPAT) has considered the aforementioned prayers of ACCAB while taking cognisance of the Competition Commission of India (CCI's) Order as per Shri. R. Prasad (Minority) and Majority Order Para No. 10.

2. Page No. 06, Para – 6: The Hon'ble Competition Appellate Tribunal (COMPAT) has noted in the order that, QUOTE “We have deliberately quoted the prayers as at least, prima facie, we are of the opinion that none of the prayers could have been granted by the CCI. The CCI noted that the grievance of the informant (ACCAB) was that the government agencies were not considering it as an accreditation service provider and were only promoting OP 1 (QCI/NABCB) and OP 2 (NABL) which were like any other private organization. And this way, the OP 1 and OP 2 proved to be entry barrier for any other competing party to enter the market”. UNQUOTE

OUR COMMENT: The Hon'ble Competition Appellate Tribunal (COMPAT) has deliberately quoted the prayers exactly as prayed for, otherwise in the prima facie opinion of the Hon'ble Tribunal none of the informant's (ACCAB) prayers could have been granted by the Hon'ble Competition Commission of India (CCI) as the prayers are beyond the purview and jurisdiction of the Competition Commission of

India (CCI). Even though Competition Commission of India (CCI) noted the grievance of ACCAB that the government agencies were not considering it as an accreditation service provider and were only promoting OP 1 (QCI/NABCB) and OP 2 (NABL) which were like any other private organization. And this way, the OP 1 (QCI/NABCB) and OP 2 (NABL) **proved to be entry barrier for any other competing party to enter the market.** In other words, it is interesting to note that that Competition Commission of India (CCI) has categorically expressed that OP 1 (QCI/NABCB) and OP 2 (NABL) are like any other private organization”.

3. Page No. 07, Para – 8: The Hon’ble Competition Appellate Tribunal (COMPAT) has noted in the order, and QUOTE “the CCI came to a conclusion and found that there were number of certification bodies doing accreditation business in this country. Shri Sharma for the Appellant seriously objected to this statement contained in Para 12 and pointed out that though the certification bodies were more than about 137 in India, accreditation bodies were only three at least in India.” UNQUOTE.

OUR COMMENT: “Shri M. M. Sharma, Counsel for ACCAB was referring to only three accreditation bodies in India namely; “QCI/NABCB, NABL and ACCAB.”

4. Again on Page No. 07, Para – 9: of COMPAT ORDER and QUOTE “After considering the overall scenario of the facts, the CCI came to the conclusion that there was no material available or made available by the informant that the OP 1 and OP 2 were or are the dominant players in the market as suggested above . It is obvious that these two opponents could not be held as the dominant players as the accreditation business is international and there are several international bodies operating in India which are also doing the accreditation of certificate bodies.” UNQUOTE.

OUR COMMENT: This means that OP 1 (QCI/NABCB) and OP 2 (NABL) do not enjoy the monopolistic position as accreditation bodies in India as there are already several international bodies operating in India providing accreditation services.

5. Page No. 08, continuing with Para – 9: wherein the Hon'ble COMPAT ORDER mentions, and QUOTE “we have heard Ms Kohli, Shri Mayank Bansal, Shri Sumit Babar and also Sri R. M. Sharma on behalf of opponents..... it was pointed out that at the time when the notifications were issued the informant was nowhere in the picture. They further explained to us that even at that time the notification suggests that any other accreditation body comparable with the OP 1 or as the case may be OP 2 in their international standards were acceptable to the government companies.” UNQUOTE.

OUR COMMENT: This means all the government notifications were prior to the business set up by ACCAB, and even in these notifications it is suggested that any other accreditation body comparable to OP 1 (QCI/NABCB) and OP 2 (NABL) were acceptable to the government companies.

6. Again on Page No. 08, Para – 10, COMPAT ORDER further states and QUOTE “Be that as it may, the real position, which comes out of the debate, is that it is not compulsory for any accreditation body to be under any network of law and even the accreditation bodies operating outside the India are free to grant the certificates of accreditation even to players in India.” UNQUOTE.

OUR COMMENT: This means that the accreditation activities of ACCAB or QCI/NABCB or NABL are not required to be covered under any system of law and are therefore free to grant certificates of accreditation to the players in India. This also means that ACCAB does not require any permission, sanction or approval of any ministry / government department / agency to operate as an accreditation body.

7. Page No. 09, continuing with Para - 10 COMPAT ORDER states and QUOTE “ This is apart from the fact that is obvious that the informant is a competing body with the OP 1 and OP2 and, therefore, cannot complain if the opponents Nos. 1 and 2 advertise their own skills and importance.” UNQUOTE.

OUR COMMENT: This means the Hon'ble Competition Appellate Tribunal (COMPAT) has noted the fact that ACCAB is competing body with the QCI/NABCB and NABL.

8. Further on Page No. 09, Para – 11, COMPAT ORDER states and QUOTE “The CCI had correctly noted that Opponent Nos. 1 and 2 were not the dominant players that there is no activity on their part to keep any players or any competitor out of the market which is clear from the fact that any body would have the authority to act as the accrediting body provided such body has necessary infrastructure.” UNQUOTE.

OUR COMMENT: This means that QCI/NABCB and NABL do not enjoy the monopolistic position as accreditation bodies in India as they have no objection or have not indulged in activity to keep any competitors out of the market. However, any-body including ACCAB would have an authority to act as the accrediting body provided such body has the necessary infrastructure.

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Note:

1. The Competition Appellate Tribunal is a statutory organization established under the provisions of the Competition Act, 2002 to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Competition Act, 2002. The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government. The Appellate Tribunal shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908). Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein. If any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding **rupees one crore** or imprisonment for a term up to **three years** or with both as the Chief Metropolitan Magistrate, Delhi may deem fit.
2. The aforementioned synopsis has been prepared by the independent legal experts for the benefit of the stakeholders and ACCAB has no say in it.