



COMPETITION COMMISSION OF INDIA

Case No. 35 of 2023

In Re:

Association of Indian Laboratories ('AOIL')
(Regd. under Co-operative Societies Act)
113, First Floor, Sushant Tower, Sec-56
Gurugram – 122011 (Haryana)

Informant

And

National Accreditation Board for Testing and Calibration Laboratories ('NABL')
NABL House, Plot No. 45, Sector 44
Gurugram – 122003 (Haryana)

Opposite Party

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by Association of Indian Laboratories ('**Informant**'/ '**AOIL**'), alleging contravention of provisions of Section 3 and 4 of the Competition Act, 2002 ('**Act**') by National Accreditation Board for Testing and Calibration Laboratories ('**Opposite Party**'/ '**OP**'/ '**NABL**').
2. The Informant is a registered non-profit organization with the aim to serve as a common platform for laboratories, which are operating in private as well as public sector. OP is an accreditation body, with its accreditation system established in accordance with ISO/IEC 17011. It is a constituent of Quality Council of India ('**QCI**') and stated to have been established with the objective of providing accreditation of Conformity Assessment Bodies ('**CAB**'), which involves third-party assessment of the technical



competence of testing including medical and calibration laboratories, proficiency testing providers and reference material producers. OP is further stated to be a self-financing body and it charges fees from CABs to cover its operational costs and other expenditure.

3. It has been stated by the Informant that though there are multiple accreditation bodies, NABL, being an oldest with market share of 90 percent, enjoys dominance in accrediting CABs. It has further been stated that NABL is widely recognized for its accreditation services as it has international recognition, public and industry acceptance, assurance to client of good laboratory practices. It has also been stated that NABL provides global equivalence and compatibility in measurements and for these reasons, decision makers can rely on test results.
4. As per the Information, OP claims to offer accreditation services in a non-discriminatory manner which are accessible to all CABs in India and other countries, regardless of their size or membership with any association or group or number of CABs already accredited by the OP. It has been stated that OP, in violation of its own spirit of non-discrimination, has issued a circular/letter No. NABL/ANCMT/2023/01/22-03 dated 22.03.2023. As per the said circular, OP has directed its accredited CABs operating as sole proprietors to align with any of the following forms of entity by 30.12.2023, *i.e.*, One Person Company ('OPC'), Limited Liability Partnership ('LLP'), Company, Society/Trust, and Government.
5. The Informant has alleged that such a forcible transfer of entity from one form/type of organization structure to another is a violation of the policy of impartiality of NABL *i.e.*, to act impartially and avoid any conflict of interest that may compromise its ability to make impartial decisions. It has been stated that the said circular is discriminatory, favors big players and violates the rights of small entrepreneurs. As per the Information, most of the CABs are micro and small enterprises in India as it is easier to establish these labs under sole proprietorship, which provide ease of doing business. It has been stated that migrating these labs under any of the prescribed form/structure, as mentioned in the circular referred above, will pose many challenges and it may not be economically viable for the small and medium entrepreneurs to survive. It has been



stated that transitioning the business as per the aforementioned circular may pose the following challenges:

- i. Various corporations provide industrial plots on lease to an entity on the condition that change of project and change of entity is not allowed, and if any such change is undertaken, lease is bound to be cancelled;
 - ii. Various CABs have arranged loan facilities from banks which are not ready to transfer these loans to a new entity with a new constitution;
 - iii. Transfer of assets of a lab to a new entity *via* sale of assets mode will attract heavy amount of GST to be payable immediately at the time of transfer;
 - iv. Labs will be required to freshly seek various statutory licenses/registration like ESI, PF, State Pollution Board, municipality license, electricity connection and so on, which is not only a mammoth task but also an unproductive activity;
 - v. Changing the constitution of the entity would require CAB owners to re-apply for many other licenses required under various legislations.
 - vi. Various tenders floated by government departments, PSUs and several private entities require labs to have certain number of years of operation (3-5 years in some cases) as participation condition and the change of constitution of firm will make them ineligible to participate in such tenders/bids for several years;
 - vii. Laboratory business is a business of trust and goodwill and labs have earned that trust and goodwill in several years and now in a drive to change constitution of a firm, if similar name is not available for registration, the goodwill of a lab will be lost.
6. As per the Informant, around 50% of testing and calibration labs are MSMEs having small setup and Ministry of Corporate Affairs requires various complex compliances on regular basis, which are not feasible to maintain for a small entrepreneur and will lead to closure of several CAB businesses perpetually. It has been stated that it is not viable for a small player to change its constitution and survive in the business and that NABL, in imposing such a discriminatory condition, has ignored the interest of small players.
7. While placing reliance on *Prem Prakash Vs. Chairman, Quality Council of India (Case No. 25 of 2020)*, the Informant has stated that NABL enjoys monopoly in the laboratory



accreditation service in the market in India. It has also been stated that though other private accreditation bodies are available, however, accreditation certificates issued by such bodies are not easily recognized due to which laboratories approach NABL.

8. As per the Informant, NABL has become dominant primarily because of the preference accorded to it over the years by the departments of the government which specifically require in their tender documents that the material or service providers should have their material tested from a laboratory accredited by NABL. Based on the foregoing, the Informant has alleged violation of Section 4(2)(c) of the Act by NABL.
9. The Informant has also alleged violation of Section 3 of the Act by NABL stating that it is a signatory to provide ISO/IEC 17025:2017 and ISO/IEC 15189 accreditation and as a compliance to these standards, it is requiring an enterprise to register under the Companies Act, 2013. As per the Informant, this requirement of registration will cause many problems and challenges to micro and small enterprises and will favour big players.
10. The Informant has prayed for relief by way of declaring the conduct of NABL violative of provisions of the Act and directing it to stop engaging in alleged anti-competitive conduct. The Informant has also prayed for any other order or direction as the Commission deems appropriate.
11. The Informant has also sought interim relief under Section 33 of the Act by way of: (i) direction to NABL to withhold their instructions asking CABs to convert from Sole proprietorship to any other form of entity under the Companies Act, 2013 till the proceedings are pending before the Commission; and (ii) direction to NABL to make a detailed study on the impact of their directions on the small and medium entrepreneur on changing the entity and registering it under the Companies Act, 2013.
12. The Commission considered the matter in its ordinary meeting held on 13.03.2024 and decided to pass an appropriate order in due course.
13. The Commission has perused the Information as well as material available in public domain. The primary grievance of the Informant appears to be emanating from a



circular/letter No. NABL/ANCMT/2023/01/22-03 dated 22.03.2023, issued by NABL, directing its accredited CABs which are under proprietorship form to align with any of the following forms of entity by 30.12.2023 *i.e.*, One Person Company, Limited Liability Partnership, Company, Society/Trust, Government. It is stated that most of the CABs are micro and small enterprises in India as it is easier to establish these labs under sole proprietorship firms and migrating these labs under any other forms will pose many challenges and it may not be economically viable for the small and medium entrepreneur to survive. This has been alleged by the Informant to be violative of Section 4(2)(c) of the Act.

14. At the outset, the Commission observes that the same circular was challenged as being unfair/violative of the provisions of the Act in a previous case titled as *Prem Prakash And National Accreditation Board for Testing and Calibration Laboratories & Others (Case No. 12 of 2023)*. The observation of the Commission on the said circular is extracted as follows:

“57. ... the Commission finds no reason to intervene with the impugned Circular, as the same is mandating a structure which a laboratory has to follow if it wishes to seek accreditation services from NABL. The ISO 17025:2017, as adopted by BIS, also mandates certain requirements as regards the structure of a CAB seeking an accreditation at Clause 5 ...

58. Thus, the ISO 17025:2017 lays down certain requirements with regard to the structure of a laboratory/CAB. While dealing with other allegations in the present case, the Commission had opined that accreditation of a CAB has an underlying trust element as regards the working of a CAB. On its website, in response to an FAQ, NABL has linked the enterprise form to the functioning of the CABs. Thus, as stated therein, the business entities that are not separate from their owners are required to review their business models and convert to such a model that the liability of the legal entity is not linked with that of the person running the business. In that context, a One Person Company (OPC) or any other form of legal structures, as mentioned in the Circular dated 22.03.2023, seem to have been suggested as a business model to be adopted by CABs seeking accreditation and a timeframe has been given for transition. In the FAQs, it has also been stated that an OPC provides a more standardized and accountable approach, corporate governance, separate personal and business assets, and facilitate better compliance with legal and financial obligations thereby reinforcing trust and confidence in CAB services such as testing, calibration, etc. Thus, the Circular requiring transition to any one of the legal forms mentioned under the said Circular cannot be stated to be abusive merely because it may entail an additional expense and formalities on part of the CABs. In view thereof, the Commission finds no reason to examine this circular any further.”

15. The Commission, *vide* order dated 22.08.2023 passed under Section 26(2) of the Act in Case No. 12 of 2023, had *inter-alia*, held that there was no reason to intervene with the impugned circular, as the same was mandating a structure which a laboratory had to



follow if it wished to seek accreditation services from NABL. Accordingly, there is no reason for the Commission to re-examine the contents of the impugned circular from the competition perspective in the instant matter.

16. With regards to alleged violation under Section 3 of the Act, the Commission notes that the Informant has neither referred to any particular agreement nor provided any document which could suggest existence of anti-competitive agreement in the matter.
17. In view of the facts and circumstances of the case and analysis carried out in preceding paragraphs, the Commission is of the *prima facie* view that no case is made out against NABL in respect of either Section 3 or 4 of the Act. Accordingly, the Information filed is directed to be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of reliefs as sought under Section 33 of the Act arises.
18. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Date: 05/04/2024