

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPETITION APPEAL (AT) NO. 27 OF 2022****In the matter of:**

Dushyant
House No.19
Type 2
Varun Kunj,
Rohini, Sector-5
Near Rithala Metro Station,
Delhi-110085

Appellant

Vs

1. Competition Commission of India,
9th Floor, Office Block-1
Kidwai Nagar (East)
New Delhi-110023.
2. National Accreditation Board for Testing
And Calibration Laboratories,
NABL House, Plot No.45,
Sector 44,
Gurugram 122003
Haryana.
3. Central Public Work Department,
Ministry of Housing and Urban Affairs,
Govt of India
A Wing, room Nop.101
Nirman Bhawan,
New Delhi.
4. Food Safety and Standards Authority of India,
3rd & 4th Floor,
FDA Bhawan,
Kotla road
Near Bal Bhawan,
New Delhi-110002
5. Ministry of Health and Family Welfare,
Govt of India
Room No.348, A Wing
Nirman Bhavan,
New Delhi-110011

6. Department of Commerce,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi-110011
7. Consumer Industry Section,
Deptt of Industrial Policy and Promotion,
Ministry of commerce and Industries, GOI,
Deptt of Promotion of Industry and Internal Trade,
Udyog Bhawan,
New Delhi 110011
8. Ministry of Road Transport and Highways,\
GOI
Ministry of Road Transport and Highways
Transport Bhawan, 1 Parliament Street,
New Delhi-110001
9. Water Quality Section,
Ministry of Drinking Water and Snitation,
GOI
C Wing, 4th Floor,
Pandit Deendayal Antyodaya Bhawan,
CGO Complex
Lodhi Road,
New Delhi-110003
10. Delhi Development Authority
D Block, Vikas Sadan,
INA
New Delhi-110023
11. Indian Council for Medical Research,
V Ramalingaswami Bhawan,
P.O. Box No.4911 Ansari Nagar,
New Delhi-110029
12. Regional Ayurvedic Research Institute for Skin Disorders,
Ministry of Ayush
GOI
Jawahar Lal Nehru Bhartiya Chikitsa
Avum Homeopathy Anusandhan Bhavan,
No.61-65 Institutional Area,
Opp D Block,
Janakpuri, New Delhi -110058
13. WAPCOS Ltd,
5th Floor,
Kailash Building

26 Kasturba Gandhi Marg,
New Delhi-110001

14. National Capital Region Transport Corp Ltd
Gati Shakti Bhawan,
INA, New Delhi-110023.
15. Water Resources Department,
Government of Madhya Pradesh,
Water Resources Department,
Jal Sansadhan Bhawan, Tulsi Nagar,
Bhopal (MP) 462003
16. Delhi Metro Rail Corporation
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road,
New Delhi 110001
17. Research Design and Standard Organisation,
Ministry of Railways,
RDSO, Manak Nagar,
Lucknow 226011
18. Ministry of Railways
Govt of India
Room No.301, Railway Board,
New Delhi 110001.
19. Container Corporation of India Ltd
Concor Bhawan, C-3,
Mathura Road,
Opposite Apollow Hospital,
New Delhi 110078
20. Ministry of New and Renewable Energy
Government of India
Block 14, CGO Complex Lodi Road,
New Delhi 110003
21. Government of E-marketplace,
Ministry of Commerce and Industry
2nd Floor, Jeevan Tara Building
5 Sansad Marg,
New Delhi 110001
22. Ministry of Consumer Affairs,
Food and Public Distribution
Krishi Bhawan,
New Delhi 110001

23. Ministry of Health and Family Welfare,
Room No.348, A Wing, Nirman Bhavan,
New Delhi 110001
24. New Delhi Municipal Corporation,
Palika Kendra, Parliament Street,
New Delhi 110001
25. Delhi Jal Board,
Room No.306, 3rd Floor,
Varunalaya Ph II
Jhandewalan
Karol Bagh
New Delhi 110005
26. Airport Authority of India
Corporate Headquarter,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi 110003
27. Power Grid corporation of India Ltd
B-9 Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016.
28. North Central Railway
Ministry of Railways,
Room No.301, Railway Board,
New Delhi 110001
29. Atomic Energy Regulatory Board,
Niyamak Bhavan, Anushakti Nagar,
Mumbai 400094
30. Solar Energy Corporation of India,
6th Floor, Plate B NBCC Office Block
Tower 2, East Kidwai Nagar,
New Delhi,
South West Delhi DL 110023
31. Chief Engineer, Bhopal Zone,
Sultania Infantry Lines,
Bhopal.
32. Public Health Department,
Govt of MP
Directorate of Health Services,
6th Floor,

Satpuda Bhawan,
Bhopal M.P.

33. Engineers India Ltd,
1 Bhikaji Cama Place,
New Delhi 110066
 34. National Highway Authority of India
G-5, G-6, Sector 10, Dwarka,
New Delhi 11075
 35. Indian roads Congress,
Kama Koti Marg,
Sector 6,
R.K. Puram, New Delhi-110022.
 36. Ministry of environment and Forests,
Parivesh Bhawan,
East Arjun Nagar
Delhi 110032
 37. Quality Council of India
Institution of Engineers Building,
2nd floor,
2 Bahadur Shah Zafar Marg
New Delhi 110022
 38. Central Council for Research in Ayurvedi Sciences
Ministry of Ayush,
Govt of India
Jawaharlal Nehru Bhartiya Chikitsa Evam Homeopathy
Anusandhan Bhawn,
61-65 Industrial Area, Opp D Block
Janakpuri, New Delhi 110058
- Respondents

For Appellant: Mr Sumit Jain, Advocate.

For Respondent: Ms Shama Nargis, Dy. Director, Law, CCI, R1.

Mr Krishan Kumar, Mr. Nital Pal, Ms Swikritmala Dubey, Advocates for Respondent No.14.

Mr Arun Kumar, Advocate for R19

Ms Prema Priyadarshini, Advocate for Respondent No.27.

JUDGEMENT
VIRTUAL MODE

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

The present Appeal under Section 53B of the Competition Act, 2002 (hereinafter referred to as 'the Act') has been preferred by the Appellant who had filed Information Application under Section 19 of the Act before the Competition Commission of India (CCI) as an individual. The Appeal has been preferred against the order dated 24.02.2022. The order was passed under Section 26(2) of the Act on the basis of the CCI's considered opinion that no prima facie case of contravention of any of the provisions of Section 3 and/or 4 of the Act was made out against the opposite parties for causing an investigation into the matter.

Before the CCI an affidavit was filed in support of the Information Petition duly sworn by the Appellant. The said affidavit was also signed and verified by one Mr. Sumit Jain purporting to be Counsel of the Informant.

The Information Application was filed by the Appellant under Section 19(1)(a) of the Act alleging contravention of provisions of Section 3 and 4 of the Act by National Accreditation Board for Testing and Calibration Laboratories (hereinafter referred to as BABL/OP1), Central Public Works Department (CPWD/OP2), Food Safety and Standards Authority of India (FSSAI/OP3), Ministry of Health and Family Welfare (OPP-4), Department of Commerce, Ministry of Commerce and Industries (OP_5), Consumer Industry Section, Department of Industrial Policy and Promotion(OP-6), Ministry of Road Transport and Highways (OP-7), Water Quality Section, Ministry of Drinking Water and Sanitation (OP-8), Delhi Development Authority (OP-9),

Indian Council for Medical Research (ICMR/OP-10), Regional Ayurvedic Research Institute for Skin disorders (OP-11), WAPCOS Limited (OP-12), National Capital Region Transport Corporation Ltd (OP-13), Water Resources Department, Govt of Madhya Pradesh (OP-14), Delhi Metro Rail Corporation (OP-15), Research Design and Standard Organisation, Ministry of Railways (OP-16), Ministry of Railways (OP-17), Container Corporation of India Ltd (OP-18), Ministry of New and Renewable Energy (OP-19), Government e-marketplace, Ministry of Commerce and Industry (OP-20), Ministry of Consumer Affairs, Food and Public distribution (OP-21), Ministry of Health and Family Welfare (OP-22), New Delhi Municipal Corporation (OP-23), Delhi Jal Board (OP-24), Airport Authority of India (OP-25), Power Grid Corporation of India Ltd (OP-26), North Central Railway, Ministry of Railways (OP-27), Atomic Energy Regulatory Board (OP-28), Solar Energy Corporation of India (OP-29), Chief Engineer Bhopal Zone, Sultania Infantry Lines (OP-30), Public Health Department, Govt of MP, Directorate of Health Services (OP-31), Engineers India Ltd, (OP-32), National Highway Authority of India (OP-33), Indian Roads Congress (OP-34), Ministry of Environment and Forests, govt of India (OP-35), Quality Council of India Institution of Engineers Building (OP-36) and Central Council for Research in ayurvedi Sciences, Ministry of Ayush (OP-37).

The Informant alleged in its information application that NABL has formed various exclusive supply agreements (ESAs) in violation of Section 3(4)(b) of the Act with remaining Opposite Parties where no other accreditation service other than that of NaBL was allowed. The formation of such ESAs is claimed to be deduced from various Tender/Notices/Guidelines/Expression

of Interest/Letters/Provisions of the Act etc issued by Ops wherein it is, inter alia, mentioned that suppliers to the said Ops are required to obtain testing or accreditation services from NABL/labs accredited by NABL.

On receipt of information filed by the Appellant, the CCI considered averments and allegations. It was noticed that the Informant is primarily aggrieved by the acts of Ops, wherein OP-2 –OP37 have allegedly prescribed the requirement of testing laboratories being accredited by NABL in the various Tender/Notices/Guidelines/Expression of Interest/Letters etc issued by them. In effect the Ops thus want the materials/services being procured by them to be tested in a lab accredited by NABL. The CCI in its analysis viewed that *“for the applicability of Section 3(4) of the Act and the examination of contravention for the same, the existence of an agreement/ arrangement between the parties is a sine qua non, which aspect is neither captured in the Information nor any evidence given in relation thereto. The Informant has not provided an iota of evidence about NABL having an agreement/ arrangement with OPs in relation to some exclusive arrangement in favour of NABL. Further, a majority of the OPs have issued Tender/ Notices/ Guidelines/ Expression of Interest/ Letters etc. wherein the terms and conditions appear to be framed by the respective OPs and in any case it cannot be deduced that NABL has a role in deciding such terms and conditions, giving it some preference. Thus, the Commission, prima facie, does not find contravention of Section 3(4) of the Act by any of the OPs.”* The CCI in paragraph 14, 15, 16, 17, 18 and 19 of the impugned order has given its detailed analysis which are quoted hereinbelow:-

“14. The Commission notes that a majority of the allegations emanates from the terms and conditions as appearing in the respective documents

of OPs, which is within the autonomy of a procurer. According to the Commission, the procurer, in its wisdom and based on its specific requirements, ought to have the autonomy to decide as to what goods/ services it intends to procure. However, this shall be subject to safeguards laid down under the relevant rules of procurement that may be applicable to that entity, besides it complying with the provisions of the Act, to the extent are applicable and having regard to the position of such entity in the market, the product/ service it seeks to procure, and without such entity acting in any unfair or discriminatory manner, in this process. 15. With respect to the examination of allegations pertaining to Section 4 of the Act, the Commission notes that the Informant has delineated separate relevant markets for all OPs, depending on the nature of product/ service being procured by such OPs and has claimed that each such OP is dominant in its relevant market. However, the Informant has not supplied any data/ information to support his claim in respect of market share or dominance of each of the OPs. For brevity, the product/service in question, for which the OPs have issued/ published Tender/ Notices/ Guidelines/ Expression of Interest/ Letters etc. during various period is tabulated below:-

OP	Products/Services
OP-2	Steel products
OP-3	Food products
OP-4	Food products

OP-5	<i>Agricultural and processed food products and marine products</i>
OP-6	<i>Toys</i>
OP-7	<i>Steel Products</i>
OP-8	<i>Supply of water</i>
OP-9	<i>Physical materials</i>
OP-10	<i>Test for COVID19</i>
OP-11	<i>Test for skin disorder</i>
OP-12	<i>Water and soil</i>
OP-13	<i>Construction work material in Regional Rapid Transit System</i>
OP-14	<i>Construction material used in irrigation systems.</i>
OP-15	<i>Material for construction of metro.</i>
OP-16	<i>LED equipment used in Indian Railways</i>
OP-17	<i>Services of laboratories for pathological investigations.</i>
OP-18	<i>Cement and steel.</i>
OP-19	<i>Power conditioners for setting up power grid</i>
OP-20	<i>Procurement of goods through GeM</i>
OP-21	<i>Calibration of weights and measures</i>
OP-22	<i>Diagnostic services</i>
OP-23	<i>Construction Material</i>
OP-24	<i>Material used in the production and supply of water</i>
OP-25	<i>Material used in airport work</i>
OP-26	<i>Transmission lines/ sub-stations</i>

OP-27	<i>Material used in railway works</i>
OP-28	<i>Services of laboratories for X-rays</i>
OP-29	<i>PV modules</i>
OP-30	<i>Soil testing</i>
OP-31	<i>Material used in construction of water taps</i>
OP-32	<i>Testing services for measuring devices</i>
OP-33	<i>Material used in highway works</i>
OP-34	<i>Material used on construction of roads</i>
OP-35	<i>Laboratories for testing air, water, soil and biota</i>
OP-36	<i>Materials used in construction</i>
OP-37	<i>Laboratory investigations on CGHS approved rates.</i>

16. The Commission notes that the allegations pertain to grant of preference to NABL or laboratories accredited by NABL in relation to accreditation/ certification services sought by other OPs (OP-2 to OP-37) which are procuring different/distinct goods and services. In this regard, it is observed that each of the OPs, being OP- 2 to OP-37, operate in a varied and wider market which comprises different/distinct goods and services, both in the public and private sector. Furthermore, the goods/ services being sought to be procured by each OP-2 to OP-37 is available for procurement by other procurers too, both in public as well as private sector. Thus, on the basis of the above, the Commission is of the view that it may not be germane to define the precise relevant market qua each

of the 37 OPs and assess the dominance of OPs individually in each of such relevant market.

17. The Commission, based on the above, notes that, with the existence of such large avenues of procurement which may entail the requirement of testing by laboratories if so required by procurers, a broader market does exist for the suppliers of laboratory testing service, and there may not be a foreclosure, as contended by the Informant, for other accreditation agencies, which may grant accreditation to laboratories. Further, the Commission notes that there is no hint to suggest that procurers other than OPs are also imposing similar conditions as the present OPs (i.e., OP-2 to OP-37). Therefore, it belies the allegation of foreclosure of the market for other accreditation agencies desirous of their services.

18. The Commission has, in some previous cases, recognising the autonomy of the procurer, stated that the procurer is the best judge of what and how it wants. At the cost of repetition, the Commission notes that every consumer/ procurer must have the freedom to exercise its choice freely in the procurement of goods/ services and such a choice is sacrosanct in a market economy. While exercising their choice, OPs are free to stipulate standards for procurement, and the same cannot be held to be out-rightly anti-competitive and will depend, inter alia, on factors such as the nature of the procurement, the size of procurer, the goods/ services sought to be procured by it, and whether such buying will result in foreclosure for other sellers operating in the market who are competing to sell and are substantially dependent on such buying process. Further,

the autonomy to specify the requirements of procurement is inherent in the procurers. When the procurer is a dominant buyer in its sphere of economic activity and its unilateral conduct in the buying process can tend to distort competition on the supply side of such market, then there is reason to be circumspect.

19. In the present case, as regards OP-2- OP 37 seeking NABL's accreditation (based on their policies/ guidelines/ rules of procurement/ some enactments governing their functioning), there is nothing to suggest that NABL had any role in framing the same."

Analysing the cases in paragraphs quoted hereinabove the Learned CCI had come to the conclusion that no prima facie case of contravention of either of the provisions of the Act was made out and finally rejected the Information Petition which has been assailed in the present Appeal by the Appellant.

The Appeal was taken up for hearing under the caption ***for admission (fresh case)*** on 01.06.2022. After hearing Mr. Sumit Jain, learned counsel for the Appellant and Ms Shama Nargis, Dy. Director CCI, the Tribunal got some doubt regarding the entity/status of the Appellant and as such asked learned counsel for the Appellant to file a detailed affidavit showing the status of the Appellant. Mr. Sumit Jain filed the present Appeal on behalf of the Appellant and record shows that even the Information Application was also filed before the CCI on behalf of the Appellant through Mr. Sumit Jain, claiming to be counsel. In compliance with the order dated 01.06.2022 the Appellant filed detailed affidavit showing the status of Appellant which was filed vide Diary No.57550 dated 12.07.2022. After the detailed affidavit was filed by the Appellant, the Appeal was taken up for hearing under the caption

for **admission (fresh case)** on 18.7.2022. While the Tribunal was hearing this Appeal, and gone through relevant record, it reflected that Mr. Sumit Jain had filed pleading before this Tribunal as well as before CCI pretending to be counsel of the appellant. At the time of hearing Mr. Sumit Jain on being asked about the affidavit, he immediately placed paragraph 3 of the affidavit which was filed on 12.07.2022 wherein Mr. Sumit Jain highlighted that the appeal was filed in its **'individual'** capacity. On being confronted that in paragraph 2 of the affidavit appellant himself has stated that Appellant was running a accreditation agency as proprietor and as such why he did file information as well as this Appeal in individual capacity? Mr Jain tried to justify that the Appellant was apprehending that a number of Respondents are direct and indirect procurers of accreditation services through various tenders and RPF documents where they might indulge in selective targeting of the said agency by denying it the business opportunities. In its affidavit the Appellant admits that he was running proprietorship agency of accreditation. However, he filed information in his **individual** capacity. Had there been any apprehension in the mind of the Appellant regarding disclosure of his entity under the Act itself there was provision to claim secrecy but instead of doing the same the Informant pretended to be individual and had filed the Information Petition. At this juncture it is apt to reproduce Regulation 49 of the CCI (General Regulations) 2009 as follows:-

“49 Fee under clause (a) of sub-section (1) of section 19 of the Act.

*(1) Each information received under clause
(a) of sub-section (1) of section 19 of the Act from any person shall be accompanied by proof of having paid the fee as under:*

- (a) Rupees 5000 (Five thousand) in case of individual or Hindu Undivided Family (HUF),*
(b) Rupees 10,000 (ten thousand) in case of Non-Government Organisation (NGO), or Consumer Association, or a Co-operative Society, or Trust, or
(c) Rupees 40,000 (forty thousand) in case of firm (including proprietorship, partnership or Limited liability partnership) or company (including one person company) having turnover in the preceding year upto rupees two crore, or
(d) Rupees 1,00,000 (one lac) in case of firm (including proprietorship, partnership or Limited liability partnership) or company (including one person company) having turnover in the preceding year upto rupees two crore, and upto rupees 50 crores
€ Rupees 5,00,000 (Five lakh) in the case not covered under clause (a), (b),(c) or (d).

In view of the aforesaid Regulation certain slab of fees has been prescribed for filing information before the CCI. If the information is filed in the individual capacity, as in the present case has been filed, the Appellant was required to pay fee of Rs.5000/-. If the Appellant had given correct information regarding filing of the information in the capacity of the proprietor he was required to deposit Rs. 40,000/-, if the turnover in the preceding year was only upto Rs.2 crore. If during the preceding year the turnover of the Information/Proprietor firm was exceeding Rs. 2 crores and upto Rs.50 crores then he was to pay fee of Rs.1 lac. Further if the case of the Appellant was not covered under clauses (a), (b) or (c) then he was required to deposit the fee of Rs. 5 lakhs. In any event filing of information by the Appellant in individual capacity though he was running proprietorship agency of accreditation which was to some extent akin to the activity of NABL, certainly it will amount to mislead the CCI. It was not end on the part of the Appellant in misleading the CCI but the same approach was adopted by the Appellant while filing the present appeal. In this Appeal also a stand has been taken that the Appellant has filed the appeal in his individual capacity. Law is

settled on the point that if one does not come before the Court or Tribunal with clean hands his claim deserves to be rejected, where as in the present case it is not a simple case that the Appellant has not approached the Court with clean hands but it is one step ahead wherein he has misled both the CCI as well as this Tribunal.

The other thing which we have noticed is most disturbing. Before the CCI, Information was filed by the Appellant through Mr. Sumit Jain who claimed as counsel whereas while hearing was going on, on being asked as to why he has not filed Vakalatnama, Mr Jain candidly admitted that he was not an Advocate. Mr Sumit Jain was again asked whether he was Chartered Accountant, Company Secretary or Cost Accountant, on which he replied that he was not either CA, CS or Cost Accountant. The Act itself prescribes about representation of the parties before the CCI as well as before the Appellate Tribunal. At this juncture it is apt to reproduce Section 35 as well as Section 53(s) of the Act as follows:-

“Section 35 of the Competition Act, 2002

35. Appearance before Commission.—A person or an enterprises or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries, or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act,

1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.”

Section 53-S of the Competition Act, 2002

53S Right to legal representation. —

(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

(3) The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal. *Explanation. —The expressions "chartered accountant" or "company secretary" or "cost accountant" or "legal practitioner" shall have the meanings respectively assigned to them in the Explanation to section 35.]*

On examination of above said two provisions there is no doubt in the mind of the Tribunal that a party cannot be represented by any third person who have not been included in either of the aforesaid statutory provisions. At first instance on noticing the appearance of Mr. Sumit Jain, one may not consider it as serious lapse, but while we were examining record we have noticed that Mr. Sumit Jain has not only unauthorisedly represented the Appellant but to some extent he has impersonated himself to be counsel for the Appellant.

Alongwith the present Appeal, the Appellant has brought on record copy of information application filed before the CCI as Annexure 2. Annexure 2 starts from Page 55 of the Memo of Appeal which virtually indicates all the information. This document has been signed by Mr. Sumit Jain as counsel for the Informant. On the Memo of appeal in the bottom at page 39, Mr. Sumit Jain has signed as counsel for the Appellant. Again he signed on the declaration of the Appellant at Page 40 depicting him as counsel for the Appellant. Here he has also signed as 'authorised representative'. Before this Tribunal in IA No.1629/2022 which was filed primarily for exemption from filing certified copy of the impugned order, on the index Mr. Sumit Jain has signed as counsel. At page 3 of IA No.1629/2022 on declaration by the Appellant, Mr. Sumit Jain has signed pretending to be counsel for the Appellant. In Volume VIII at Page 2133, in the bottom Mr. Sumit Jain has signed as 'counsel'. In page 2134 on verification in the bottom he signed as Counsel. At page 2137 on caveat clearance in the bottom Mr. Sumit Jain has signed as counsel for the Appellant. In the authorisation which has been brought on record at Page 2138, after acceptance Mr. Sumit Jain has simply put his signatures. The copies of page No.39, 40, 55, 2133, 2134, 2137 and 2138 are given below:

The appellant submits that it is ready to file written submissions/arguments before the first hearing after serving the copy of the same on respondents.

19. WHETHER THE COPY OF MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES

The appellant submits that a copy of Memorandum of Appeal with all enclosures has been forwarded to all respondents and all interested parties. Postal receipts for such proof of service have been enclosed.

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT(S) DEEMS NECESSARY TO SET OUT

The Appellant does not deem any other relevant material detail necessary to be set out.

21. RELIEF SOUGHT

In view of the facts mentioned in paragraph 7 above, points in dispute and questions of law set out in paragraph 8, the appellant prays for the following reliefs:

- a) Impugned order be set aside
- b) DG Investigation be ordered with an explicit direction that addition parties be added to the case based on the similar conduct and material available on record
- c) Any other order which the Hon'ble Tribunal may deem fit
- d) For costs

Dated at NEW DELHI this 15th day of April 2022.

Sumit

Counsel for the Appellant

Dushyant

Appellant

DECLARATION BY APPELLANT

The appellant above named hereby solemnly declares that nothing material has been concealed or suppressed and further declares that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals and true translation thereof.

Verified at NEW DELHI on this at 15th ^{April} day of ~~February~~ 2022.

Sumit
Counsel for Appellant

Dushyant
Appellant

Verification

I, Dushyant, resident of House no. 19, Type - 2, Varun Kuni, Rohini Sector - 5 Near Rithala Metro station Delhi - 110085 do hereby verify that the contents of the paras 1 to 7 are true to my personal knowledge/derived from official record) and para 8 to 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Date : 15/04/2022

Place : New Delhi

Sumit
Signature of the appellant
or authorized representative

ANNEXURE - A 2

55

AT THE COMPETITION COMMISSION OF INDIA

NEW DELHI

INFORMATION CASE NO. _____ OF 2021

Dushyant

.....INFORMANT

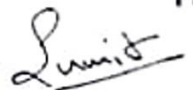
VS.

National Accreditation Board For Testing And Calibration
Laboratories And Others

....OPPOSITE PARTIES

MASTER INDEX

Filed by:



Sumit Jain & Harpreet Gupta

Counsel for the Informant

Email: jainsumit0018@gmail.com

M: +91 81072 87270

23/12/2021

2133
2068

AT THE COMPETITION COMMISSION OF INDIA

NEW DELHI

DUSHYANT

.....INFORMANT

VS.

NATIONAL ACCREDITATION BOARD FOR TESTING AND
CALIBRATION LABORATORIES AND OTHERS

.....OPPOSITE PARTIES

AFFIDAVIT

I, Dushyant, aged 25, resident of H. no. 16, type – 2, Varun Kunj, Rohini sector – 5, near Rithala metro station, Delhi – 110085 covered under CCI General Regulations, 2009 as an 'individual' presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Informant in the abovementioned matter and duly authorized and competent to swear the present affidavit,
2. That the contents of the Information are true to my knowledge based on records,
3. That the annexures are true copies of their respective originals,
4. That the facts stated in the above affidavit are true to my knowledge derived from the official records, which I believe to be true and correct. No part of the same is false and nothing material has been concealed there from.



Sumit
(counsel)

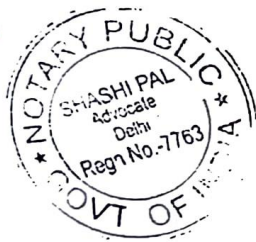
2134
~~2069~~

VERIFICATION

I, the abovementioned deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge derived from official records which I believe to be true and correct. No part of the same is false and nothing material has been concealed from.

Identified the deponent who has Signed in my presence
Verified at New Delhi on the 22 DEC 2021 day of December, 2021.


DEPONENT



ATTESTED

NOTARY PUBLIC DELHI
22 DEC 2021


(Counsel)

2137

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT NEW DELHI

APPELLATE JURISDICTION

COMPETITION APPEAL (AT) NO. 27 OF 2022

IN THE MATTER OF:

DUSHYANT

.....APPLICANT

AND

COMPETITION COMMISSION OF INDIA

AND ORS.

.....RESPONDENTS

CAVEAT CLEARANCE

This is to state that the Appellant hereby named, i.e. Dushyant, in the above matter has received no communication from any of the Respondents/Opposite Parties whatsoever.

Dushyant

Mr. Dushyant

Date: April 15, 2022

Place: New Delhi

Swit

Counsel for the Appellant



AUTHORIZATION TO ACT

STATED THAT M/s. Sherman Foundation for Competition Law and Economics, Sumit Jain, Vikrant Singh all R/o 517, Sector-15, Part-1, Gurugram, Delhi NCR - 122001 Authorised Representative on behalf of myself/ proprietorship be and is hereby authorised and empowered to execute, sign, verify and institute, conduct, defend, compound, compromise, withdraw and abandon any legal proceedings by or against the Association or its officers/ proprietorship/ myself or otherwise in the Competition Commission of India and the National Company Law Appellate Tribunal and to sign and verify all pleadings, plaints written statements, replications, writs, petitions, rejoinders as well as affidavits, counter affidavits and all other papers, applications as may be required to be filed in the Court including filing of appeals, reviews, revisions, rectifications Special Leave Petitions, Caveat Application, making statements, explanations, evidence etc. and to engage and appoint Advocates, legal counsels, pleaders, professionals, umpires etc. to sign Vakaltnama, to appoint, empower, authorize, nominate and constitutes any person as Attorney for and on behalf of the Association and to represent the Association/ myself in all other matters incidental thereto as may be considered necessary expedient and in particular to initiate appropriate legal proceedings before the appropriate Court.

For

Mr. Dushyant

Dushyant

Authorised Signatory

(Sign and Name)

15/04/2022

Sumit

(Accepted)

15/04/2022

On examination of aforesaid fact one thing is clear that neither informant was competent nor the present appeal was competent to be taken note of. Since both the proceeding were contrary to statutory provisions particularly in violation of Section 35 and Section 53-S of the Act respectively, apart from its dismissal on the ground of non-maintainability of the Information Petition or the present Appeal, the role of Mr. Sumit Jain also appears to be doubtful

During the hearing of the Appeal Mr Jain accepted that he is neither advocate, chartered accountant, company secretary nor cost accountant. Even then pretending to be counsel, he has filed the present appeal as well as information before the CCI. In such view of the matter particularly on the ground that the Appellant has misled the CCI as well as this Tribunal regarding his actual entity i.e. a proprietorship agency, there is no need to examine the Appeal on merit. With a view to preserve sanctity of the court proceeding and confidence of the public in the system, simply dismissal of this Appeal may not serve the purpose. Further to prevent recurrence of such activity, while dismissing the appeal it is appropriate to impose cost on the appellant.

Accordingly the Appeal stands dismissed with imposition cost of Rs.1 lakh on the appellant. The Appellant will deposit the cost of Rs.1 lakh with Delhi High Court Legal Services Committee within twenty days from today and will submit the proof of depositing the same with the Registrar of this Tribunal. In case of non-depositing of cost, as indicated above, the Registrar of this Tribunal will proceed in accordance with law for non-complying the orders of this Tribunal.

Before parting with this order since this Tribunal has noticed that Mr. Sumit Jain has pretended to be a counsel and unauthorisedly appeared in the present Appeal, it is desirable to direct the Registrar of this Tribunal to take appropriate steps in accordance with law after examining entire materials on record with the approval of Hon'ble The Chairperson. The Registry is further directed that henceforth on filing of appeals under the Competition Act, it may minutely examine as to whether the Appeal has been preferred in terms of Section 53-S of the Act or not. The CCI is also directed to remain vigilant while entertaining Information applications. Unauthorised representation must be checked at its initial stage.

(Justice Rakesh Kumar)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

29th July, 2022

Bm