

**IN THE COURT OF SH. RAJESH GOYAL
ADJUDICATING OFFICER/ADDITIONAL DISTRICT MAGISTRATE
(DISTRICT WEST)
OLD MIDDLE SCHOOL BUILDING, RAMPURA, NEW DELHI**

No. 07/ADM(W)/FS/2012/

DATED :-

ORDER

(UNDER RULE 3.1.2 OF FOOD SAFETY & STANDARDS RULES, 2011)

IN THE MATTER OF:

**Food Safety Officer
Department of Food Safety
Govt. of NCT of Delhi
A-20, Lawrence Road Ind. Area,
Delhi-110035**

.....Applicant

VERSUS

**Sh. Mridutjal Sharma S/o Sh. Mahesh Sharma
Reliance Fresh (A Unit of M/s Reliance Fresh Ltd.)
B-18, New Multan Nagar, New Delhi-110056**

**R/O M-28, 1st Floor, Kirti Nagar,
New Delhi-110015** **.....FBO-cum-Store Manager/Respondent No. 1**

**Sh. Sanjeev Kumar Tyagi S/o Sh. Ved Prakash Tyagi
Reliance Fresh (A Unit of M/s Reliance Fresh Ltd.)
B-18, New Multan Nagar, New Delhi-110056**

**R/o WZ-76/1, Village Kesho Pur
Vikas Puri, New Delhi-110018** **... Nominee of Sales/Retail
Unit/Respondent No. 2**

**Sh. Sishuranjan Singh S/o Sh. D. K. Singh
M/s Reliance Fresh Ltd
Warehouse/Supplier unit at:
Central Warehousing Corporation**

(Opp. SBI Colony), Rana Pratap Bagh,Nominee of Warehouse/ Supplier
Delhi-110033 unit/Respondent No. 3

R/o 1502, Reglia Heights
Shipra Sun City, Indrapuram
Ghaziabad, U.P-201014

M/s Reliance Fresh Ltd.
Having Registered Office at:Company/Respondent No. 4
3rd Floor, Court House, Lokmanya Tilak Marg,
Dhobi Talao, Mumbai-400002

Sh. Ashok Kumar Gaba S/o Sh. Ram Das Gaba
M/s A. Kay Sales
81-B, State Bank Colony Street, Delhi-110009

R/o 408, Kohat Enclave,
Pitampura, Delhi-110034Proprietor of Supplier concern to Company/
Respondent No. 5

Sh. P. D. Goswami S/o Late Sh. Nand Lal Goswami
M/s Mohan Meakin Ltd.
Sale Depot at: C-167, Naraina Industrial Area,
Phase-1, New Delhi-110028Financial Director of Sales Depot of R-8/
Respondent No. 6

R/o 2, Mohan Nagar,
Ghaziabad, U. P.-201007

Sh. T. R. Tyagi S/o Late Sh. Prithvi Singh Tyagi
M/s Mohan Meakin Ltd.
Breakfast food unit/Manufacturing unit at:
Mohan Nagar, Ghaziabad, U. P.-201007

R/o III-F-132, Nehru Nagar,
Ghaziabad, U. P. Nominee of Breakfast Food Unit/
Manufacturing Unit/Respondent No. 7

M/s Mohan Meakin Ltd.
Having Registered Office at:
Solan Brewery, P. O. Solan
Solan-173214 (Himachal Pradesh)

**....Manufacturing Company/
Respondent No. 8**

An application under Rule 3.1.1 (3) of Food Safety & Standards Rule, 2011 was filed in this court by Food Safety Officer Sh. Saurabh Sharma against Respondents 1 to 5 as mentioned above for adjudication of the offence for violation of section 26 (2) (ii) of the Food Safety and Standards Act 2006 (Hereinafter called as "the said Act") read with section 3 (1) (zx) of the said Act and also for violation of Regulation 2.4.8 of FSS (Food Products Standards and Food Additives) Regulation 2011 which is punishable under section 51 of the FSS Act 2006.

In the application, it is alleged that a sample of "Cornflakes" was taken in sealed packets of 500 gm each by Food Safety Officer Sh. Saurabh Sharma from Sh. Mridutjal Sharma S/o Sh. Mahesh Sharma from the premises of Reliance Fresh (A Unit of M/s Reliance Fresh Ltd), B-18, New Multan Nagar, New Delhi-110056 on dated 04/01/2012 for analyzing under the provisions of Food Safety & Standards Act/Rules/Regulations. The said food article was found stored for sale for human consumption at the time of taking the sample. It is stated that Food Business Operator did not made request to send a counterpart of the sample for analysis from NABL Accredited Laboratory.

The Food Analyst analyzed the sample and reported the sample to be Substandard vide Food Analyst Report No. PFA/Enf/20/2012 dated 12/01/2012. The Report of Food Analyst is as follows:-

"The sample is Substandard because it contains extraneous matter such as Sugar, Salt etc."

The Food Analyst has also reported in its reports regarding label that:

"The sample declares ingredients as sugar, salt, malt extract, baking powder, sodium bicarbonate and niacin apart from corn".

It has been further stated that Respondents were given opportunity to file an appeal against the report of the Food Analyst under section 46 (4) of the said Act for sending one part of the sample to the Referral Lab, but they did not prefer any appeal.

In the application, it is stated that Sh. Mridutjal Sharma (Respondent No. 1) was the Store Manager of Reliance Fresh store from where the sample was taken and he

was looking after its day to day business. Reliance Fresh is a unit of M/s Reliance Fresh Limited (Respondent No.4) having registered office at Mumbai. Sh. Sanjeev Kumar Tyagi (Respondent No. 2) was appointed as nominee under FSS Act 2006 for abovesaid Sales/Retail Unit and as such he was incharge of and responsible for the conduct of business. The sample article of Cornflakes was supplied to the retail unit by the warehouse/supplier unit of the company M/s Reliance Fresh Ltd situated at Rana Pratap Bagh, Delhi. Sh Sishuranjan Singh was appointed as nominee under FSS Act 2006 for said Warehouse/Supplier Unit and as such he was responsible for day to day conduct of business of said warehouse of the company. The sample article was supplied to the warehouse/supplier unit of M/s Reliance Fresh Ltd. by M/s A Kay Sales of Delhi, which is a proprietorship concern and Sh. Ashok Kumar Gaba (Respondent No.5) is the proprietor and as such responsible for conduct of its business. The sample article of Cornflakes was supplied to M/s A Kay Sales by M/s Mohan Meakin Ltd from its sale depot located at New Delhi. M/s Mohan Meakin Ltd (Respondent No. 8) is a company having nine Directors. However, out of these nine Directors, only the Financial Director Sh. P. D. Goswami (Respondent No. 6) looks after the day to day business of abovesaid sales depot of the company. The sample article was manufactured by the Breakfast Food unit of the company M/s Mohan Meakin Ltd located at Mohan Nagar, Ghaziabad, Uttar Pradesh. Sh. T. R. Tyagi was appointed as its nominee under the said Act for its Breakfast Food unit/Manufacturing unit and Sh. Tyagi was incharge of and responsible for the conduct of its business. M/s Mohan Meakin Ltd is manufacturing company, having its registered office at Solan, Himachal Pradesh.

On receipt of application from the Food Safety Officer, it was inferred that an inquiry was necessary to look into the charges leveled against Respondents. So the Respondents were served notice under Rule 3.1.1 (6) of the FSS Rules 2011 alongwith a copy of Report of Food Analyst for giving them an opportunity to make written/oral representation alongwith to produce all relevant documents/evidences.

During the proceedings, R-1 Sh. Mridutjal Sharma, R-2 Sh. Sanjeev Kumar Tyagi, R-3 Sh. Sishuranjan Singh were present. R-5 Sh. Ashok Kumar Gaba remained present. Advocate Sh. S. K. Kochhar, appeared for R-6 to 8. R-7 Sh. T.R. Tyagi also remained present. R-1 Sh. Mridutjal Sharma appeared on behalf of R-4 Company M/s Reliance Fresh Ltd.

Respondent No. 1 to 4 submitted joint written submissions. It was submitted that Respondent No. 1 is the employee of M/s Reliance Fresh Ltd and Respondent No. 2 & 3 are the nominees of the company under the said Act/Rules. It was further submitted that alleged food article i.e. Mohun's New Life Cornflakes was supplied by Respondent No. 5 Sh. Ashok Kumar Gaba to Respondent No. 4 M/s Reliance Fresh Ltd and the same was manufactured and packed by M/s Mohan Meakin Ltd. It was also submitted

that prima-facie no case is made out against the R-1 to R-4 in view of the provisions of Rule 2.1.14 (2) of the FSS (Licensing and Registration of Food Business) Regulations 2011 whereby the benefit of warranty should be given to them. Further R-1 to R-4 relied upon a judgment of Hon'ble High Court, Nagpur Bench in Criminal Application No. 2871 of 2004 decided on 07/01/2008 which says that the retailers cannot be held responsible for alleged adulteration. Respondent No. 1 to 4 filed additional submissions also stating that they had purchased the food article from Respondent No. 5 and sold it in the same condition as was purchased and therefore, they cannot be held liable for any alleged regularities in the said product.

Respondent No. 5 Sh. Ashok Kumar Gaba, who is the proprietor of M/s A Kay Sales did not file any written submissions and stated that he purchased the said food article from M/s Mohan Meakin Ltd and sold it to the Respondent No. 3 i.e. warehouse/suppliers unit of M/s Reliance Fresh Ltd.

Respondent No. 6 to 8 filed written submissions, stating that Respondent No. 8 is the manufacturing company and Respondent No. 6 and 7 are nominees of the said company. It was submitted that Food Analyst Report dated 12/01/2012 is based upon incorrect interpretation of the Act/Rules/Regulations as well as incorrect understanding of the Regulation No. 2.4.8 which provides the specifications of "Cornflakes". It was submitted that sugar & salt cannot be termed and treated as extraneous matter, as has been reported by Food Analyst. Nowhere in the regulations, the use of salt and sugar has been prohibited. In several other products stated in the regulation use of sugar has been specifically prohibited like Khoya. It was further submitted that present proceedings are being unlawfully carried out under section 51 of the Act whereas section 54 of the Act is more appropriate and exact provision for offence relating to extraneous matter. It was submitted that as per section 27 of the said Act only manufacturer can be held liable and therefore Respondent No. 6 & 7 cannot be held responsible.

Food Safety Officer filed counter reply to the written submissions made by the Respondents. Food Safety Officer submitted that the word "extraneous matter" has been correctly interpreted in the light of express definition given in section 3 (1) (i) of Food Safety and Standards Act 2006 and the presence of salt, sugar etc. in Cornflakes amounts to extraneous matter in view of Regulation No. 2.4.8 of FSS (Food Products Standards and Food Additives) Regulation 2011. It was further submitted that section 26 (2) (ii) of the said act imposes responsibility on every Food Business Operator in respect of substandard food article. The contention of Respondents that the report of Food Analyst is baseless since Respondent No. 8 (Manufacturing Company) was given an opportunity to file an appeal against the Report of Food Analyst for sending one part of sample to Referral Lab vide letter dated 23/01/2012 but Respondent did not avail this opportunity. It was also submitted that as per Regulation No. 2.1.14 (2) of FSS

(Licensing and Registration of Food Business) Regulation 2011, every manufacturer, distributor or dealer selling an article of food to vendor shall give either separately or in the bill cash memo or label, a warranty, however the said regulation nowhere provides for giving any benefit of warranty as alleged. It was further submitted that the reliance of Respondent No. 1 to 4 on the Judgment of High Court, Nagpur Bench decided on 07/01/2008 is misconceived since the said judgment was based upon Prevention of Food Adulteration Act, 1954, however in the present case the sample has been taken under Food Safety & Standards Act, 2006. The contention of Respondent No. 1 to 4 that they are not liable since they have sold cornflakes in same condition as and when they purchased, is not maintainable because in the present case ingredients used in the Cornflakes were clearly indicated on the Label which could have been easily noticed by Respondent No. 1 to 4 while purchasing product from supplier and therefore Respondent No. 1 to 4 failed to exercise due diligence by not taking reasonable precautions as mentioned in section 80 of the Act to prevent the commission of offence or selling substandard food and therefore all the 8 respondents are liable for penalty under section 51 of the Act.

Arguments of applicant as well as all the respondents were heard in detail.

Before arriving at the conclusion, the relevant provisions of the FSS Act/Rules/Regulations shall have to be duly considered. The Regulation No. 2.4.8 of FSS (Food Products Standards and Food Additives) Regulation 2011 provides for standards/specifications for "Cornflakes". The Regulation No. 2.4.8 (Cornflakes) is reproduced below:-

"CORNFLAKES mean the product obtained from dehulled, degermed and cook corn (Zea mays L.) by flaking, partially drying and toasting. It shall be in the form of crisp flakes of reasonably uniform size and golden brown in colour. It shall be free from dirt, insects, larvae and impurities and any other extraneous matter. It shall conform to the following standards:-

Moisture	Not more than 7.5%
Total ash excluding salt	Not more than 1.0 percent (on dry weight basis).
Ash insoluble in dilute HCl	Not more than 0.1 percent (on dry weight basis).
Alcoholic acidity (with 90 percent alcohol)	shall be equivalent to not more than 2.0 ml. N.NaOH per 100g.of dried substance.

The said specification nowhere mentions the presence of sugar and salt as ingredients. It also clearly specifies that it shall be free from dirt, insects, larvae and impurities and any other extraneous matter. Therefore, it can genuinely be assumed that any ingredient (including sugar and salt) which has not been specifically included as ingredient in the prescribed standards shall be considered as extraneous matter.

The Report of Food Analyst has reported the sample of cornflakes as substandard because it contains extraneous matter such as sugar, salt etc. It is very pertinent to mention here that the respondents were given opportunity to file an appeal against the report of Food Analyst for sending one part of the sample to Referral Lab but respondents did not availed this opportunity, for the reasons which respondents could not clarified during the proceedings.

In this regard, a letter dated 23/02/2012 of R-7 Sh. T. R. Tyagi, Authorized Signatory for Breakfast Foods Factory of M/s Mohan Meakin Ltd written to Sh. R. K. Ahuja, Designated Officer-II, Department of PFA (District West), Govt. of NCT of Delhi is very relevant, wherein it has been clearly stated that if there is any shortcoming it may be condoned since they has been advised that product in question is proprietary Food as per their set formula of ingredients/additives and said declaration shall also be published on the label. Therefore, it is very clear that Manufacturing Company M/S Mohan Meakin Ltd, vide abovesaid letter, has already accepted the violation of Regulation 2.4.8 of FSS (Food Products Standards & Food Additives) Regulation 2011. Company has also admitted the said product to be a food proprietary item, however no such declaration has been published on the Label. The Company has failed to produce due permission of the competent authority permitting the product in question as a proprietary food. Further no such declaration of proprietary food was found mentioned on label of cornflakes.

Further, section 3 (1) (zx) clearly stipulates that an article of food shall be deemed to be substandard if it does not meet the specified standards but not so as to render the article of food unsafe. There means if specific standards have been provided under the FSS Act/Rules/Regulations in respect of a particular food article and the sample does not meet the said specific standards but does not render the article of food unsafe, the sample shall be considered as substandard. In the present case also, specified standards of cornflakes has been provided under Regulation 2.4.8 of FSS (Food Products Standards and Food Additives) Regulation 2011 but the sample taken by Food Safety Officer did not meet the specified standards as per the report of Foods Analyst and therefore this case would be covered under section 51 of FSS Act 2006 and not under section 54 of said Act. Section 54 of the act would be applicable for those cases wherein specific standards have not been provided under FSS Act/Rules/Regulations.

Regarding the issues of fixing the responsibilities of one or more Food Business Operators, the provisions of section 26 & 27 of the Act are very clear and categorical. Section 26 (2) (ii) provides that no food business operator shall himself or by any other person on his behalf manufacture, store, sell or distribute any article of food which is substandard. Section 27 of the Act also laid down the liability of the manufacturers, packers, wholesalers, distributors and sellers. In the present case the primary and main liability lies on manufacturing company i.e. M/s Mohan Meakin Ltd and its nominees responsible for the conduct of business at the time of taking sample. However, the wholesaler/distributor and seller company are also liable for committing offence for dealing in substandard food article because the ingredients used in the cornflakes were clearly and conspicuously indicated on the label of the product which was either in their knowledge or they failed to discharge their obligation to exercise due diligence to prevent the commission of the offence and therefore the defence of due diligence as provided under section 80 of said Act will not be available to the wholesaler/distributor and seller in the present case.

Moreover, seller company M/s Reliance Fresh Ltd. is known in the business world as a big, renowned and professional company which is involved in selling hundreds of food articles from its stores. Therefore, it can not be accepted from such a company that it had not taken reasonable precautions and exercised due diligence to prevent the commission of offence under FSS Act/Rules/Regulation

Therefore, from the analysis of abovementioned facts, documents placed on records, written submissions made by all the parties, it is proved beyond doubt that Food Business Operators/Respondents have committed an offence by violating the Regulation 2.4.8 of FSS (Food Products Standards and Food Additives) Regulation 2011 and provisions of section 26 (2) (ii) read with section 3 (1) (zx) of the FSS Act 2006 which is punishable under section 51 of the said act.

Therefore, following penalties are hereby imposed under section 51 of the FSS Act 2006:-

- (a) Sh. Sanjeev Kumar Tyagi, Nominee of Sales/Retail Unit(R-2)– Rs. 5,000/-
- (b) Sh. Sishuranjan Singh, Nominee of warehouse/Supplier Unit (R-3) – Rs. 5,000/-
- (c) M/s Reliance Fresh Ltd, Company (R-4) – Rs. 25,000/-
- (d) Sh. Ashok Kumar Gaba, Proprietor of M/s A Kay Sales (R-5) – Rs. 25,000/-
- (e) Sh. P.D. Goswami, Financial Director (R-6) – Rs. 10,000/-

(f) Sh. T. R. Tyagi, Nominee of manufacturing Unit(R-7) – Rs. 20,000/-

(g) M/s Mohan Meakin Ltd., Manufacturing Company (R-8) – Rs. 3,00,000/-

The abovesaid penalties shall be paid by the accused/Respondents in this court in 7 days in the form of a Crossed Demand Draft drawn on Nationalized Bank in favour of "Adjudicating Officer, District West" payable at Delhi, failing which amount would be recovered as arrears of land revenue.

Dated:- 18/01/2013

RAJESH GOYAL
ADJUDICATING OFFICER / ADM
(DISTRICT WEST)
GOVT. OF NCT OF DELHI