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

F.No. 09/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 INDL. AREA,
DELHI-110035

.....APPLICANT

Vs.

1. SH. MUKESH SINGH S/O SH. SACHITANAND,
M/S LM-365,
(A UNIT OF LAL MAHAL RETAIL LTD),
B-5, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH, NEW DELHI-26

R/O 2135/7, PREM NAGAR,
OPP. RAJKIYA SARVODYA VARISHT BAL VIDYALAYA,
NANGLOI, DELHI-110041

.....FBO-cum-Store Manager/Respondent No. 1

2. SH. PREM CHAND GARG S/O SH. HARNARYAN,
M/S LM-365,
(A UNIT OF LAL MAHAL RETAIL LTD),
B-5, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH, NEW DELHI-26

R/O A-8, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH,
NEW DELHI-110026

.....FBO-cum-Director//Respondent No. 2

3. ANITA GARG W/O SH. PREM CHAND GARG,
M/S LM-365,
(A UNIT OF LAL MAHAL RETAIL LTD),
B-5, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH,
NEW DELHI-26

R/O A-8, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH,
NEW DELHI-110026

.....FBO-cum-Director/Respondent No. 3

4. SH. HARNARYAN AGGARWAL S/O SH. MAUJI RAM AGGARWAL
M/S LM-365,
(A UNIT DF LAL MAHAL RETAIL LTD),
B-5, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH,
NEW DELHI-26

R/O A-8, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH,
NEW DELHI-110026 .....FBO-cum-Director/Respondent No. 4

5. M/S LAL MAHAL RETAIL LTD,
(OWNER OF LM-365),
B-5, BHAGWAN DASS NAGAR,
EAST PUNJABI BAGH
NEW DELHI-110026 .....The Company/Respondent No. 5

6. SH. RAJA SINGH KAPOOR, S/O SH. JAGJIT SINGH KAPOOR,
M/S KASHMIR APIARIES PVT. LTD.,
G.T. ROAD, DDRAHA, LUDHIANA, PUNJAB

R/O KASHMIR HOUSE, G.T. ROAD,
DORAHA, PUNJAB .....FBO-cum-Director/Respondent No. 6

7. RITU KAPOOR, D/O SH. JAGJIT SINGH KAPOOR,
M/S KASHMIR APIARIES PVT. LTD.,
G.T. ROAD, DORAHA, LUDHIANA,
PUNJAB

R/O HOUSE NO. 75, GURU NANAK PURA,
DORAHA, LUDHIANA,

PUNJAB .....FBO-cum-Director/Respondent No. 7

8. M/S KASHMIR APIARIES PVT. LTD.,
G.T. ROAD, DORAHA, LUDHIANA,
PUNJAB .....The markettier Company/Respondent No. 8

9. SH. CHARANPREET SINGH S/O SH. BAKHSHISH SINGH,
M/S LEE BEE FOODS, VILLAGE KADDON,
G.T. ROAD, DDRAHA-141421,
DISTT. LUDHIANA, PUNJAB

R/O HET RAM COLONY, MOOL CHAND HOTEL,
H.NO. 202, MALOUT, DISTT. MUKTSAR,
PUNJAB. .....FBO-cum-Nominee of Manufacturing Company/Respondent No. 9

10. M/S LEE BEE FOODS, VILLAGE KADDON,
G.T. ROAD, DORAHA-141421, DISTT. LUDHIANA,
PUNJAB .....The Manufacturing Company/Respondent No. 10

An application under Rule 3.1.1 (3) of Food Safety & Standards Rules, 2011 was filed in this court by the Food Safety Officer Sh. Baljit Singh against abovementioned Respondents No. 1 to 10 for adjudication of the offence for violation of provisions of Section 26 (2) (ii) read with Section 3(1) (zf) (A) (i) (a) of the Food Safety and Standards Act, 2006 (herein after called "the said Act") and Regulation no. 2.3.3 of Food Safety and Standards (Prohibition & Restrictions of Sales) Regulations, 2011 which is punishable under section 52 of the Food Safety and Standards Act, 2006 and also violating the provisions under section 26 (2) (v) of the Food Safety & Standards Act, 2006 read with regulations No. 3.1.2 (6) of the Food Safety & Standards (Food Products Standards and Food Additives) Regulation 2011 which is punishable under section 58 of the Food Safety & Standards Act 2006 and further also violating the provisions of section 27 (3) (C), section 27 (2) (C) and section 27 (1), read with section 3 (1) (zf) (A) (i) (a) of the said Act and Regulations No. 2.3.3 of Food Safety & Standards (Prohibition and Restriction of Sales) Regulations 2011 which is punishable u/s 52 of the said Act.

In the application, it was alleged that a sample of "Apricot Honey Spread" was taken in originally sealed bottles by Food Safety Officer Sh. Baljeet Singh from Sh. Mukesh Singh S/o Sh. Sachitanand (Respondent No. 1), Store Manager

from the premises of M/s LM-365 (A unit of Lal Mahal Retail Ltd.) B-5 Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi on 09/09/2011 for analyzing under the provisions of Food Safety and Standards Act/Rules/Regulations. The said food article was found storing and selling for human consumption at the time of sampling.

The food analyst analyzed the sample and reported the sample to be in contravention of the FSS Regulations 2011 vide food analyst report no. PFA/ENF/270/2011 dated 16/09/2011. The report of Food analyst is as follows:-

"The sample is in contravention of Regulation No. 2.3.3 of the Food Safety and Standard (Prohibition and Restriction on sales) Regulations 2011 and Regulation No. 3.1.2(6) of the Food Safety & Standards (Food Product Standards and Food Additives) Regulations 2011."

The application states that in view of the Regulation 2.3.3 of Food Safety and Standards (Prohibition and Restriction on sales) Regulations 2011, using the word "Apricot Honey Spread" on the package of food article suggesting the product "Honey" to the purchaser is misleading the purchases as if he is consuming the honey, thereby, amounting to Misbranding of the article. Further, in view of the Regulation 3.1.2 (6) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011, use of permitted colour is prohibited in "Apricot Honey Spread" which was found present in the sample as per the report of the Food Analyst.

As per the application, Sh. Mukesh Singh (Respondent No. 1) was store Manager of M/s LM-365 (A Unit of Lal Mahal Retail Ltd.) and he was looking after its business at the time of sampling and as such he was responsible for the conduct of business of said unit as Food Business Operator-cum-Store Manager. M/s LM-365 (A Unit of Lal Mahal Retail Ltd.) is a company which owns M/s LM-365. There was no nominee for the company for the said unit at the time of lifting of sample. The Respondent No. 2, 3 & 4 are Directors of M/s Lal Mahal Retail Ltd.. During the investigation, it was revealed that the said food article was supplied to M/s LM-365 by M/s Kashmir Apiaries Pvt. Ltd., (Respondent No. 8) which is the Markettier Company of the product manufactured by M/s Lee Bee Food (Respondent No. 10). Respondent No. 6 & 7 are two directors of M/s Kashmir Apiaries Pvt. Ltd. and it had no nominee appointed under the FSS Act 2006. The sample food article was manufactured by M/s Lee Bee Foods, Village Kaddon, G.T. Road Doraha, Ludhiana, Punjab (Respondent No. 10) as was mentioned on the labels of the bottles. It was further submitted that Sh.

Charanpreet Singh (Respondent No. 9) was the nominee of the company M/s Lee Bee Foods at the time of sampling and was responsible for the conduct of day to day business of company.

On receipt of application from the Food Safety Officer, it was inferred that an inquiry was necessary to look into the charges levelled against the respondents. So the respondents were served notice under rule 3.1.1(6) of Food Safety and Standards Rules 2011 alongwith copy of Report of Food Analyst for giving them an opportunity to make representation.

During the proceedings, Respondent No. 1 Sh. Mukesh Singh remained present in person. Sh. Shakeeb Ahmed Khan, Manager (Administration) of M/s Lal Mahal Retail Ltd was present for Respondent No. 2 to 5. Sh. Malvinder Singh was present for Respondent No. 6 to 10. Sh. Charanpreet Singh (Respondent No. 9) was also present during the hearings.

Respondent No. 1 Sh. Mukesh Singh refused to file any written reply and submitted that he was the Store Manager of M/s LM-365 at the time of sampling and now he has resigned from the job.

Sh. Shakeeb Ahmed Khan, authorized representative of the Respondent No. 2, 3, 4 and 5 filed written submission, stating that the sample commodity was supplied to M/s Lal Mahal Retail Ltd. by respondent No. 8 i.e M/s Kashmir Apiaries Pvt. Ltd., G.T. Road, Doraha, Ludhiana, Punjab vide invoice dated 13/05/2011 and therefore Respondent No. 8 is responsible for any kind of contravention of Food Safety and Standards Regulation 2006 due to labeling and packing.

Sh. Malvinder Singh, authorized representative of the Respondent No. 6 to 10 filed written submission stating that the product in question Apricot Honey Spread is a proprietary food and honey is only one ingredient. It was submitted that the product has never claimed to be pure honey. Moreover, there is no prohibition to add honey as ingredient in any proprietary food, therefore, the allegation of violating regulation no. 2.3.3. of Food Safety and Standards (Prohibition and Restriction on sales) Regulation 2011 is without any basis. It was further submitted that allegations of violating Regulation No. 3.1.2 (6) is also without basis since there is no prohibition of edible colours which have been found in the product and such edible colours are permitted vide Regulation No. 3.1.1.8 of Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011, through the principle of carryover. As per regulations

3.1.18 of FSS (Food Products Standards and Food Additives) Regulations 2011, such edible colours are permitted in various fruit products and colours are likely to be present in such proprietary foods when such food products, flavoring agents etc. are used as ingredients.

Food Safety Officer filed counter reply to the written submissions made by the Respondents. FSO submitted that Respondents No. 1 to 5, being seller of misbranded food article in question are liable for violation in view of Section 27 (3) of the said Act. It was further submitted that the details of the label of the sample were reproduced on the Form V-A (Prepared at the time lifting of sample) which shows that said food article contains permitted synthetic food colours (E110 and E102) as an ingredient. It was further submitted that word "Honey" cannot be used as the name of the product alongwith other ingredients as the product resembles Honey, thereby violating the provisions of Regulation No. 2.3.3 of the FSS (Prohibition and Regulation on sales) Regulation 2011.

Arguments of all parties heard.

In this regard, reference will have to be made to the relevant provisions of the Act/Regulations. Regulation No. 2.3.3 of Food Safety & Standards (Prohibition & Restriction on Sales) Regulation 2011, is reproduced below:-

"2.3.3: **Food resembling but not pure honey not be marketed as honey: No person shall use the word 'honey' or any word, mark, illustration or device that suggests honey on the label or any package of, or in any advertisement for, any food that resembles honey but is not pure honey**".

Therefore, the abovesaid regulation stipulates that no person shall use the word "Honey" or any word, mark, illustration or device that suggests honey on the label or any package of any food that resembles Honey but is not pure Honey. In the present case, Food Business Operators have used the word "Honey" in the name of the product i.e. Apricot Honey Spread, which resembles the honey, which amounts to misbranding the food article, thereby, violating the provisions of Regulation No. 2.3.3 of Food Safety and Standards (Prohibition and Restriction of Sales) Regulation 2011.

Secondly, reference has to be made to the provisions of Regulation No. 3.1.2 (6) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011. This provision stipulates that use of permitted synthetic food colours in or upon any food other than though specifically

enumerated in said provision is prohibited. The product i.e. Apricot Honey Spread is not specifically enumerated in the said regulation and therefore use of permitted synthetic food colours is prohibited in product under question. In this case report of the Food Analyst is showing the test for Coaltar Dye as positive, which is not permitted as per the Regulations and thereby violating the provisions of Regulation No. 3.1.2 (6) of the Food Safety and Standards (Food Products and Food Additives) Regulation 2011.

Further the contention of the Respondent No. 6 to 10 that the product in question Apricot Honey Spread is a proprietary food, is not tenable since Respondent has failed to produce due permission of the competent authority permitting the product in question as a proprietary food. During the hearing Respondent informed that they are in the process of applying to Competent Authority for obtaining permission for Apricot Honey Spread as a proprietary food article. Further, it is pertinent to mention here that the Respondents were given opportunity to file an appeal against the report of Food Analyst dated 16/02/2011 for sending one part of sample to Referral Lab but Respondent did not availed this opportunity.

From the analysis of abovementioned facts, documents placed on record, written submissions made by all the parties and taking into consideration the legal position, it is proved beyond doubt that Food Business Operators/ Respondents have committed two offences in this case.

Firstly, the sample was misbranded since there is a violation of Regulation No. 2.3.3 of FSS (Prohibition and Restrictions of Sales) which is punishable under section 52 of the FSS Act 2006.

Secondly, the sample was in contravention of Regulation No. 3.1.2 (6) of the FSS (Food Products Standards and Food Additives) Regulation 2011 which is punishable under section 58 of the FSS Act 2006.

Further the provisions of section 26 and 27 of FSS Act of 2006 ar to be considered while ascertaining and deciding the responsibility and liability of Food Business Operators for committing offence in this case. According to the section 27 of the said act, in case of misbranded food article, manufacturer or packer, wholesaler or distributor and seller (all three) are liable under the act. Therefore, following penalties are hereby imposed under section 52 of the FSS Act 2006:-

(a) Sh. Mukesh Singh, Store Manager (Respondent No. 1) – Rs. 3,000/-.

(b) Sh. Prem Chand Garg, Director (Respondent No. 2)– Rs. 5,000/-

(c) Smt. Anita Gard, Director (Respondent No. 3)– Rs. 5,000/-

(d) Harnaryan Aggarwal, Director (Respondent No. 4)– Rs. 5,000/-

(e) M/s Lal Mahal Retail Ltd, Company (Respondent No. 5) – Rs. 10,000/-

(f) Sh. Raja Singh Kapoor, Director (Respondent No. 6) – Rs. 5,000/-

(g) Smt. Ritu Kapoor, Director (Respondent No. 7) – Rs. 5,000/-

(h) M/s Kashmir Apiaries Pvt. Ltd.,Markettier Company (Respondent No.8) – Rs. 10,000/-

(i) Sh. Charanpreet Singh, Nominee (Respondent No. 9) – Rs. 10,000/-

(j) M/s Lee Bee Foods, the Manufacturer Company (Respondent No. 10) – Rs. 30,000/-

Further, following penalties are hereby imposed under section 58, of the FSS Act 2006:-

(a) Sh. Raja Singh Kapoor, Director, Markettier company (Respondent No. 6) – Rs. 5,000/-

(b) Smt. Ritu Kapoor, Director of Markettier Company (Respondent No.7) – Rs. 5,000/-

(c) M/s Kashmir Apiaries Pvt. Ltd., Markettier Company (Respondent No. 8) – Rs.10, 000/-

(d) Sh. Charanpreet Singh, nominee of the company (Respondent No. 9) – Rs. 5,000/-

(e) M/s Lee Bee Foods, manufacturing Company (Respondent No. 10) – Rs. 20,000/-

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.

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

Dated:- 16/01/2013