

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

F.No. 08/ADM(W)/FS/2012/250-252

Dated:- 11/07/2012

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. SONIL ALIAS SH. SDMIL S/D SH. SUBHASH CHANDER
M/S MELA RESTAURANT
(A UNIT OF MARKO AGRO HOUSING & FINANCE LIMITED),
G-6, COMMUNITY CENTRE, VIKAS PURI,
NEW DELHI-18**

**R/O J-60, VIKAS PURI
NEW DELHI-110018**

.....FBO-cum-Supervisor/Respondent No. 1

- 2. SH. KULDEEP KUMAR JULKA S/O SH. R.L. JULKA,
M/S MELA RESTAURANT
(A UNIT OF MARKO AGRO HOUSING & FINANCE LIMITED),
G-6, COMMUNITY CENTRE, VIKAS PURI,
NEW DELHI-18**

**R/O C-13/36, NEW KRISHNA PARK,
NEW DELHI-18**

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

- 3. SH. RAJAN JULKA S/O SH. KULDEEP KUMAR JULKA,
M/S MELA RESTAURANT
(A UNIT OF MARKO AGRO HOUSING & FINANCE LIMITED),
G-6, COMMUNITY CENTRE, VIKAS PURI,
NEW DELHI-18**

**R/D C-13/36, NEW KRISHNA PARK,
NEW DELHI-18**

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

- 4. SH. RINKU JULKA S/O SH. KULDEEP KUMAR JULKA,
M/S MELA RESTAURANT
(A UNIT OF MARKO AGRO HOUSING & FINANCE LIMITED),
G-6, COMMUNITY CENTRE, VIKAS PURI,
NEW DELHI-18**

5. M/S MARKD AGRD HOUSING & FINANCE LIMITED,
G-6, COMMUNITY CENTRE, VIKAS PURI,
NEW DELHI-18

.....The Company/Respondent No. 5

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 Sh. Sonil Alias Sh. Somil S/o Sh. Subhash Chander (Supervisor of Restaurant), Sh. Kuldeep Kumar Julka S/o Sh. R.L. Julka (Director), Sh. Rajan Julka S/o Sh. Kuldeep Kumar Julka (Director), Sh. Rinku Julka S/o Sh. Kuldeep Kumar Julka (Director), Company i.e. M/S Marko Agro Housing & Finance Limited for adjudication of the offence for violation of Section 26 (2) (ii) read with Section 3 (1) (zx) of the Food Safety & Standards Act, 2006 and Regulation 2.3.47.5 of the Food Safety & Standards (Food Products Standards And Food Additives) Regulations, 2011 which is punishable under Section 51 of the Food Safety & Standards Act, 2006, and have also violated the provisions of Section 26 (2) (ii) read with Section 23 (1) & (2), Section 3 (1) (zf) (A) (i) (a), Section 3 (1) (zf) (A) (i) (a) (iii), and Section 3 (1) (zf) (C) (i) of the Food Safety & Standards Act, 2006 and also violated Regulations 2.2.2.6, 2.2.2.8 & 2.2.2.9 of the Food Safety & Standards (Packaging & Labeling) Regulations, 2011 which is punishable under Section 52 of the Food Safety & Standards Act, 2006.

In the application, it was alleged that a sample of "Cashews" was taken in originally sealed plastic packs by Food Safety officer Sh. Baljit Singh from Sh. Sonil Alias Sh. Somil S/o Sh. Subhash Chander from the premises of M/s Mela Restaurant, G-6, Community Centre, Vikas Puri, New Delhi-18 on 24/08/2011 for analysis under the provisions of Food Safety & Standards Act/Rules/Regulations. It was stated that Sh. Sonil was found using and storing the said food article i.e. Cashews for the preparation of curries of vegetables etc. for sale for human consumption, at the time of sampling.

The Food Analyst analyzed the sample and reported the sample to be substandard and also misbranded vide Food Analyst Report No. PFA/Enf./115/2011 dated 05/09/2011. The report of Food Analyst is as Follows:-

“The sample is substandard because it is not free from insects. The sample is also misbranded because there is violation of Regulation no. 2.2.2.6, 2.2.2.8 and 2.2.2.9 of the Food Safety and Standards (Packing and Labeling) Regulation 2011”.

As per the report of Food Analyst, the product was substandard as the sample was found to contain one living insect in the sample, whereas as per the prescribed standards no insect should be present in said food article, thereby violating the Regulation No. 2.3.47.5 of Food Safety and Standards (Food products Standards And Food Additives) Regulation 2011. The sample was declared as misbranded as it was without declaration of complete address of manufacturer, batch no. and date of packing and thereby violating the regulations 2.2.2.6, 2.2.2.8 & 2.2.2.9 of Food Safety and Standards (Packing and Labeling) Regulation 2011.

In the application, Food Safety Officer has stated that during investigation Sh. Sonil, Food Business Operator disclosed that the said Cashews were purchased by them from M/s Devender Kumar Sajan Kumar, 536/2 Katra Ishwar Bhawan, Khari Baoli, Delhi-110006, but neither said firm exists at the given address nor any invoice was produced by the Food Business Operator in its support and that the owners of M/s Devender Kumar Sanjay Kumar Jain existing at the said address denied the sale of said cashews to M/s Mela Restaurant. It has further been found that the Processor/Packer of said cashews i.e. M/s Sathi Cashew Products, Bharampur, South India being incomplete address seems to be fictitious, as the notices sent at the said address have been received back undelivered from the postal authorities with the remarks “Unknown address”.

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

During the hearing, Sh. Sonil submitted letters whereby he was authorized by the company i.e. M/s Marko Agro Housing & Finance Ltd and all three directors of the company to represent this case before this court. Sh. Sonil requested one month time to file written submissions. Sh. Sonil filed written submission vide letter dated 22/10/2012. He submitted that raw cashews are maintained to be used in food items after due inspection and cleaning under the supervision of head cook. It was submitted that proper procedure has not been followed

while taking the representative sample. The sample was taken in pre-packed poly bags which were not air tight. It was submitted that the sample was taken on 24/08/2011 and public analyst checked it on 05/09/2011 i.e. after 13 days and one insect might have entered in the poly bag during this period or an insect may have developed due to presence of moisture in the air. In respect of non declaration of complete address of manufacturer, batch no. & date of packing, respondents submitted that all hotels and restaurant use institutional packs i.e. one large pack having various small packs and complete address etc. is written on the master pack. It was submitted that FSO did not check the main master pack in which 20 number of small packs of 250 gms cashews were packed. Respondent Sh. Sonil did not appear on 18/10/2012 and 23/10/2012. Further, Sh. Sonil submitted written reply of all three directors of the company vide letter dated 31/10/2012, which reiterated the same arguments as discussed above.

Sh. Baljeet Singh, FSO filed counter reply in respect of replies submitted by respondents. He submitted that at the time of lifting of sample Food Business Operator had full opportunity to represent but he did not availed at that time. The sample was taken as representative sample following proper procedure as laid down under relevant rules. He further stated that already originally sealed poly packs taken as sample were air tight, therefore, there was no possibility of entry of moisture in the said poly packs and moreover, the day on which sample was taken was not a rainy day. Further, Food analyst vide his report dated 05/09/2011, has found the sample as properly sealed and without any leakage. Hence, there is no question of entry of one insect in the poly pack after the sample was taken. It was further stated that other factors like fungus, damages/discolored units, foreign matter cannot be influenced by the presence of mere one insect in the sample as claimed by the respondents. Further, the relevant rules and regulations does not permit any type of insects in cashews. As regard, the issue of manufacturer complete address and date of packing etc, it was submitted that the contention of the respondents is not tenable as much as that Regulation 2.6.1(5) of the Food Safety and Standards (Packaging and Labeling) Regulation 2011 provides exemption from labeling requirement only to wholesale packages regarding list of ingredients, date of manufacturer/packing, best before, expiry date etc. but there is no provision of exempting the individual small packs in the master wholesale package regarding the manufacturer complete address, batch no, date of packing etc. under the said Regulations. The provisions of Regulation 2.2.2.6, 2.2.2.8 & 2.2.2.9 of the Food Safety and Standards (Packaging and Labeling) Regulation 2011, clearly provides for mentioning of name and complete address of manufacturer, Lot/Code/Batch No. and date of manufacture or packing on the label of every

package. It was further submitted that a Panchnama was prepared on site by the Food Safety Officer at the time of lifting of said sample which was read over and explained to the Food Business Operator in Hindi also which has been duly signed by the Food Business Operator vide which Food Business Operator had refused to get the fourth part of the sample analyzed from Accredited Food Laboratory. It was also submitted that at the time of inspection only individual packages of cashews of about 250 gms each were found and no master pack containing 20 small packs of 250 gms of cashews were found available in the restaurant. Food Safety Officer further submitted that the respondents were given an opportunity to file an appeal against the report of food analyst for sending one part of sample to Referral Lab but respondents did not availed this opportunity.

During the proceedings, respondent Sh. Sonil submitted the details of sale proceeds of the restaurant for last 3 years which shows that average annual sale of food items was Rs. 60,00,000/- per annum.

From the analysis of abovementioned facts, documents placed on record and written submissions made by both parties, It is proved beyond doubt that the Food Business Operator has committed two offences in this case.

Firstly, the sample was substandard since it was having one living insect and thereby violated that provision of section 26 (2) (ii) read with section 3 (1) (zx) of the Food Safety and Standards Act 2006 and Regulation 2.3.47.5 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011, which is punishable under section 51 of the Act.

Secondly, Food Business Operator has committed offence of storing and using misbranded food article because the sample was without declaration of complete address of manufacturer, batch no., date of packing, whereby violated the regulations 2.2.2.6, 2.2.2.8 & 2.2.2.9 of the Food Safety and Standards (Packaging and Labeling) Regulations 2011 and also provisions of section 23 (1) and 23 (2) of the Act which is punishable under section 52 of the Act. Moreover, the respondents have failed to provide any documentary proof regarding name & address of the manufacturer and wholesaler of the said food article.

Therefore, the company M/s Marko Agro Housing and Finance Ltd (R-5) under which the restaurant i.e. Mela Restaurant was running business as well as Sh. Sonil Alias Sh. Somil

(P-1) who was the supervisor of M/s Mela Restaurant and was responsible for the conduct of the business of said restaurant at the time of sampling, are guilty of the offence as described above and are liable to penalty of fine u/s 51 and 52 of the Food Safety and Standards Act 2006.

Respondent No. 1 Sh. Somil Alias Sh. Sonil is hereby imposed a penalty of Rs. 20,000/- under section 51 of the Act and a penalty of Rs. 20,000/- under section 52 of the Act, thereby a total penalty of Rs. 40,000/-.

Further, Respondent No. 5 M/s Marko Agro Housing and Finance Ltd. is hereby imposed a penalty of Rs. 80,000/- under section 51 of the Act and a penalty of Rs. 80,000/- under section 52 of the Act, thereby a total penalty of Rs. 1,60,000/-.

These penalties shall be paid by the accused persons 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:- 15/01/2013