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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**CS(COMM) 271/2018**

**SOCIETE DES PRODUITS NESTLE,S.A & ANR** ..... Plaintiffs

Through: Mr. Hemant Singh, Ms. Mamta Rani Jha, Mr. Manish Kumar Mishra & Ms. Akansha Singh, Advocates (M-9438804704)

versus

**MOHD ZAHID AND SONS & ORS** ..... Defendants

Through: Mr. Gaurav Kr. Pandey, D-4&5 (M-9870526680)

Ms. Madhu Mukul Tripathi, Advocate for D-36, 37 & 96 (M-9650001599)

Mr. Sunil Dutt Dixit, Advocate for D-76 (M-9312832910)

Mr. Akshay Makhija, CGSC for Performa Defendant (M-9810079901)

Mr. Mehmood Pracha, Mr. R.H.A. Sikander, Mr. Prateek Gupta, Mr. A. Chaliha, Advocates (M-9810471891)

along with Mr. Prabhat Mishra, Asst. Director, FSSAI.

Mr. H.K. Yadav, Advocate for D-116 (M-9555767952)

Mr. Satish Kumar, Advocate for D-111 & 112 (M-9312832910)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**20.12.2018**

**I.A. 15711/2018 (u/S 151 CPC)**

1. This application has been filed by M/s Shivani Super Store, located at C-69, Shalimar Garden, Ghaziabad, U.P., through its proprietor – Mr. Vir Singh, It is submitted by the Applicant that when the Commission was executed at his premises, three to four pouches of coffee were found at his

shop. It is submitted that the said Defendant is willing to abide by the undertakings and the suit may be decreed as per para 40(a) to (c) of the plaint. The said Defendant further undertakes to pay Rs.6,000/- as damages.

2. Under these circumstances, the undertakings given by Mr. Vir Singh – proprietor of M/s Shivani Super Store – Defendant No.36 are accepted. The suit is decreed against the said Defendant in terms of para 40 (a) to (c). The said Defendant shall pay Rs.6,000/- to the Plaintiff within a period of four weeks. The application is disposed of.

**CS(COMM) 271/2018 & I.As. 23635/2014, 10880/2015, 716/2018, 17516/2018, I.A. 12272/2018**

3. Ld. Counsel for Defendant Nos.4 and 5 submits that the Defendants No.4 and 5 are also willing to suffer a decree and are willing to deposit Rs.6,000/- in favour of the Registrar General of this Court. He submits that an affidavit was filed on behalf of the said Defendants. Counsel is directed to trace the affidavit, bring the same on record and deposit the said amount. Upon the affidavit being filed, the same shall be considered on the next date.

4. Ld. Counsel has appeared for FSSAI and submits that no manufacturing of food products can take place without a licence. He submits that under Section 63 of the Food Safety and Standards Act, 2006 if any manufacture of food products take place without a licence, it is a punishable offence. In the present case, it is noticed that there are several manufacturers from whom a large volume of packaging material, pouches, wrappers, bottles and cartons of counterfeit NESCAFE coffee were seized by the Local Commissioner. The chart filed by the Plaintiff shows the following quantities having been seized from 8 manufacturers, which are extracted below:

<i>Defendant No.</i>	<i>Defendant Name</i>	<i>Recovery Made</i>
76.	<i>M/s Vijay Kumar Aggarwal 472/14, Chisti Chaman, Kishanganj, Delhi 110007 (Filed WS)</i>	<i>17 pieces 3.7 kg (4 pcs-200 gms; 1 pc- 500 gms; 12 pcs- packed coffee in inner pouches of 200 gms)</i>
77.	<i>Mr. Bharat Aggarwal 472/14, Chisti Chaman, Kishanganj, Delhi 110007 (Not filed WS)</i>	<i>7941 packaging material (1779 pcs- 200 gms (outer); 686 pcs-500g (outer); 1427 pcs-inner pouches 200 gms. 2055 pcs- Inner empty pouches- 500 gms; 2000 pcs (approx)- Rejected/unused packaging (200+500) gms) <b>Manufacturers</b> Seizure on 24.01.2015 To proceed with Trial</i>
98.	<i>Mr. Shavej Ahmed (Owner) Khasra No.-100 House No.3, Gali No.1 Village Jagatpur, Delhi-84 (Not filed WS)</i>	<i>176 pieces thin carton sheet used for packaging outer carton  <b>Manufacturer</b> Seizure on 13.07.2015 To proceed with Trial</i>
102.	<i>Mohd. Sonu Duli Ghat, Police Station Mal Salami, Patna, Bihar (Not filed WS)</i>	<i>i) 2400 pieces- Finished products-25 gms 60 kg  ii) 58,800- Packaging material including bottles, wrappers and caps- 25 gms</i>
103.	<i>Mohd. Shaukat Village: Lodi Katra, Police Station Khaje Kala, Patna, Bihar (Not filed WS)</i>	<i>iii) 450 kgs- Raw Material (powder form)</i>
104.	<i>Mr. Raju Chaudhary Bhagwatnagar, Mushartoli, Police Station Agamkuan,</i>	<i>iv) Chocolate Colour: 2 bottles v) Diary: 1 piece.</i>

	<p><i>Patna Bihar</i>  <i>Also at:</i>  <i>Mohalla Chik Toli, Police Station Khaje Kala, Patna, Bihar</i>  <i>(Not filed WS)</i></p>	<p><b><i>Manufacturers and accused in criminal complaint</i></b>   <i>To proceed with Trial</i></p>
111	<p><i>Mr. Love Grover</i>  <i>Third Floor, Building No.4261, Gali Harian, Sadar Bazar, Delhi</i>   <i>(Filed WS)</i></p>	<p><i>20 Boxes of 12 Pieces-500 gms 120 kg</i>  <b><i>Manufacturer</i></b>  <i>To proceed with Trial</i></p>
115	<p><i>Aakash Computer Graphics</i>  <i>72, Main Road Dhir Pur (Burari to Camp Main Road) Near Verma Clinic, &amp; Nirankari Colony, Delhi-110009</i>   <i>(Not filed WS)</i></p>	<p><i>1132 Pieces of paper packaging</i>  <i>4 silver sheets having counterfeit Nescafe paper packaging design in blue colour</i>  <i>One wooden cardboard having iron slots/grooves for cutting sheet into cartons</i>   <b><i>Manufacturer</i></b>  <i>Seizure on 15.01.2017</i>  <i>To proceed with Trial</i></p>

5. The FSSAI is directed to issue orders to the Commissioner of Food Safety of the Government of NCT Delhi and Patna, Bihar in order to conduct a thorough investigation of these manufacturers and to file a report before the next date on the following aspects:

- i) Whether these manufacturers are licenced to manufacture food products at all;
- ii) Whether the said manufacturers are licenced to manufacture NESCAFE Coffee;

- iii) Whether the packaging material which was left on *superdari* has been preserved;
  - iv) What steps have been taken by the said two authorities to ensure that no counterfeit food products are manufactured within the area of their jurisdiction;
6. The said reports be filed within a period of 8 weeks. Representatives of the Plaintiff are permitted to cooperate with the Food Inspectors of relevant jurisdictions.
7. The Ld. Counsel for FSSAI is permitted to obtain electronic copy of the Court record in order to enable the said Authorities to conduct the investigation and file their reports. Both the said Authorities shall depute a Senior Official to the Court along with their reports on the next date of hearing.
8. Ld. Counsel for Defendants No.76 and 77 submits that they were only labourers who were present in the premises when the Local Commissioner was visited the premises. Both Mr. Vijay Kumar Aggarwal and Mr. Bharat Aggarwal shall remain present on the next date.
9. The FSSAI also to file an affidavit within a period of four weeks as to what steps have already been taken and can be further taken in order to stop the sale of counterfeit food products considering the large scale of manufacturers of these products which has been revealed in the present suit.
10. Mr. Akshay Makhija, Ld. Counsel is discharged.
11. List on 11<sup>th</sup> March, 2019. Interim order to continue.

**PRATHIBA M. SINGH, J.**

**DECEMBER 20, 2018/Rahul**