Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.409 OF 2025

M/s. Bob Capital Markets Ltd. …Applicant
(Through, Authorized Representative, Mr. Ajit Joshi)

Versus

The State of Maharashtra & Anr. …Respondents

Ms. Priti Rita a/w Dr. Samarth Shrikant Karmarkar i/b Karmarkar & Associates, for the Applicant.

Ms. P. P. Bhosale, APP, for the Respondent No1-State.

Mr. P. P. Chavan, for the Respondent No.2-BMC.

CORAM: MADHAV J. JAMDAR, J.
DATED: 17 JUNE 2025

JUDGMENT.:

1. Heard Ms. Priti Rita, learned Counsel for the Applicant, Ms. Bhosale, learned APP for the Respondent No.1-State and Mr. Chavan, learned Counsel for the Respondent No.2-BMC.

2. The Applicant by way of this Criminal Application filed under Section 528 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* ("**BNSS**") has *inter alia* challenged the Order dated 23rd September 2024 passed by the learned JMFC, 39th Court, Vile Parle, Mumbai below Exhibit-1 in C.C. No. 4894/SS/2024 ("**said Complaint**") issuing process under Section 394 punishable under Section 471 of the *Mumbai Municipal Corporation Act, 1888* ("**MMC Act**").

3. The said Complaint has been filed by the Municipal Corporation of Greater Mumbai (**MCGM**) under Section 394(1)(e)(i) r/w Section 471 of the MMC Act. Section 394(1)(e)(i) of MMC Act reads as under :-

> "***394. Certain articles [or animals] not to be kept, and certain trades, processes and operations not to be carried on, without a licence; and things liable to be seized, destroyed, etc., to prevent danger or nuisance***
>
> *(1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall—*
>
> *…*
>
> *(e) carry on or allow or suffer to be carried on, in or upon any premises,—*
>
> *(i)* ***any of the trades specified in Part IV of Schedule M****, or any process or operation connected with any such trade;*"

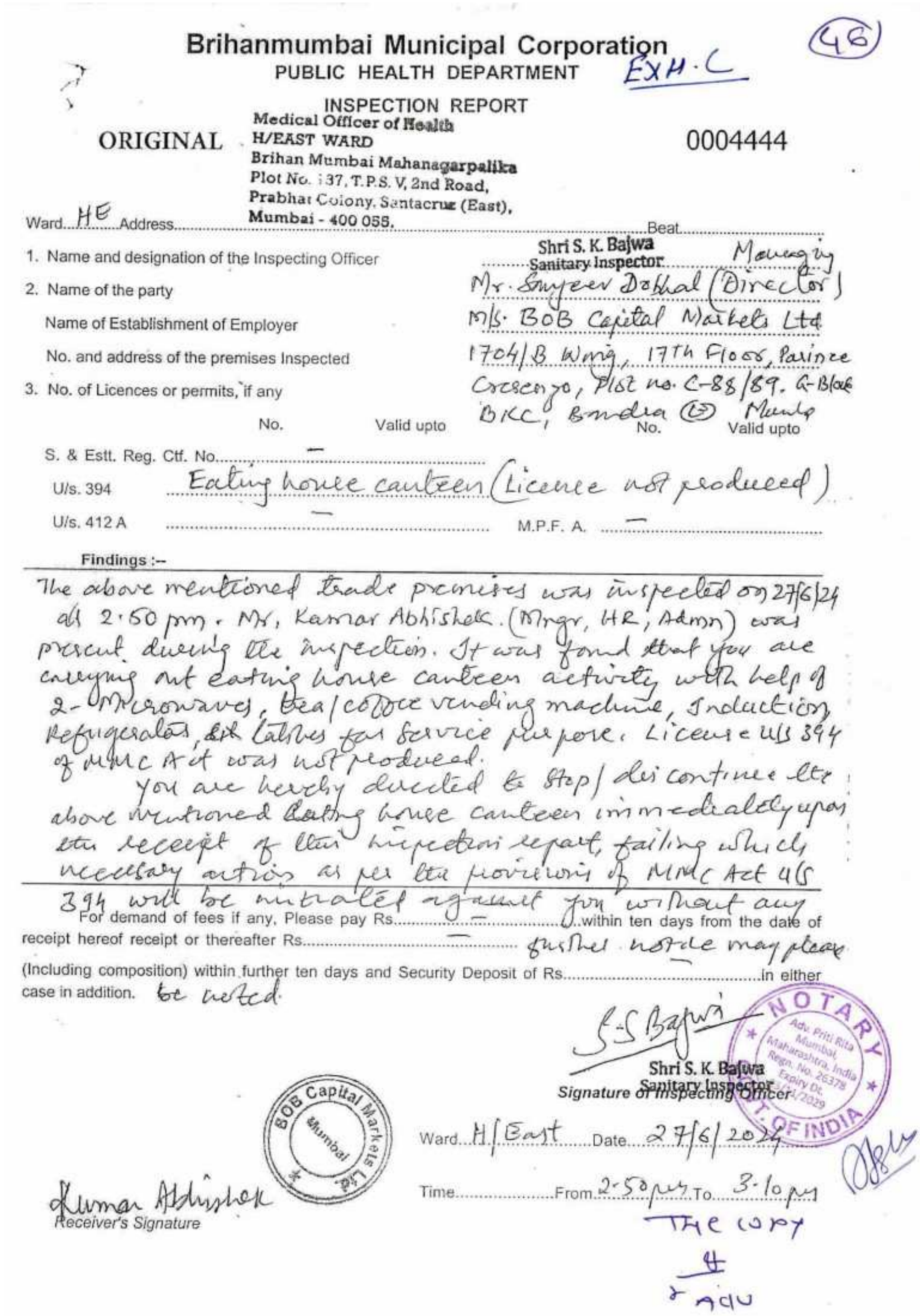
The said Schedule M provides that "Explosives" shall not be kept without a license in or upon any premises.

4. Section 471 of the MMC Act specifies that certain offences are punishable with fine. As far as Section 394, sub-section (1), clauses (a) (ii) and (b) to (f), minimum fine provided is Rs.5,000/- and maximum fine which can be imposed is upto Rs.25,000/-.

5. Perusal of said Section 394(1)(e)(i) clearly shows that what is contemplated by the said provision is that except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall, carry on or allow or suffer to be carried on, in or upon any premises, any of the trades specified in Part IV of

Schedule M, or any process or operation connected with any such trade. The said Schedule M provides that "Explosives" shall not be kept without a license in or upon any premises.

6. The MCGM has filed said Criminal Complaint pursuant to the inspection which has been carried on 27th June 2024. The said Inspection Report dated 27th June 2024 reads as under :-



Brihanmumbai Municipal Corporation
PUBLIC HEALTH DEPARTMENT
EXH. C
(46)
INSPECTION REPORT

ORIGINAL

Medical Officer of Health
H/EAST WARD
Brihan Mumbai Mahanagarpalika
Plot No. 137, T.P.S. V, 2nd Road,
Prabhat Colony, Santacruz (East),
Mumbai - 400 055.

0004444

Ward HE Address ... Beat ...

1. Name and designation of the Inspecting Officer: Shri S. K. Bajwa, Sanitary Inspector
2. Name of the party: Mr. Sanjeev Dobhal (Managing Director)

Name of Establishment of Employer: M/s. BOB Capital Markets Ltd

No. and address of the premises Inspected: 1704/B Wing, 17th Floor, Parinee Crescenzo, Plot no. C-88/89. G-Block BKC, Bandra (E) Mumbai

3. No. of Licences or permits, if any — No. — Valid upto — No. — Valid upto —

S. & Estt. Reg. Ctf. No. —

U/s. 394 Eating house canteen (Licence not produced)

U/s. 412 A — M.P.F. A. —

Findings :–

The above mentioned trade premises was inspected on 27/6/24 at 2:50 pm. Mr. Kumar Abhishek (Mngr, HR, Admn) was present during the inspection. It was found that you are carrying out eating house canteen activity with help of 2-Microwaves, tea/coffee vending machine, Induction, Refrigerator, & tables for service purpose. License u/s 394 of MMC Act was not produced.

You are hereby directed to stop/discontinue the above mentioned eating house canteen immediately upon the receipt of this inspection report, failing which necessary action as per the provisions of MMC Act u/s 394 will be initiated against you without any further notice may please be noted.

For demand of fees if any, Please pay Rs. — within ten days from the date of receipt hereof receipt or thereafter Rs. — (Including composition) within further ten days and Security Deposit of Rs. ... in either case in addition.

S. S. Bajwa
Shri S. K. Bajwa
Sanitary Inspector
Signature of Inspecting Officer

NOTARY — Adv. Priti Rita, Mumbai, Maharashtra, India, Regn. No. 26378 — T. OF INDIA

BOB Capital Markets Ltd. Mumbai

Ward H/East Date 27/6/2024

Time From 2:50 pm To 3:10 pm

Kumar Abhishek
Receiver's Signature

THE COPY
4
Adv

The relevant portion of the above Inspection Report dated 27th June 2024 is as under:-

> "*The above mentioned* ***trade premises*** *was inspected* ***on 27/06/24 at 2.50 pm.*** *Mr. Kumar Abhishek, (Mngr, HR, Admn) was present during the inspection.* ***It was found that your are carrying out eating house canteen activity with help of 2-microwaves, tea/coffee vending machine, induction, refrigerators, tables for service purpose. License u/s 394 of MMC Act was not produced.***
>
> *You are hereby directed to stop/discontinue the above mentioned eating house canteen immediately upon the receipt of this inspection report, failing which necessary action as per the provisions of MMC Act u/s 394 will be initiated against you without any further notice may please be noted.*

7. Thus, in this background of the matter, it is relevant to note the contentions raised by the Applicant in this Criminal Application.

I. *That,* ***it is duty of the Applicant company to arrange / allot and separate dining area for the employees for consuming the food tiffin carried by them, so accordingly, the Applicant company has allotted a separate place within the same premises of their workplace,*** *that, would ease the employees during the meal brakes, apparently, the* ***Applicant company with good gesture towards the employees, even arranged 2 microwave ovens, tea/coffee vending machines, induction, refrigerator, six tables, so that, the employees could reheat their food prior to consumption and tea coffee vending machines for the employees and the guests visiting their office.***

III. *That, as such,* ***it is not the case of the Respondent that, it came to their Notice that, they found any person carrying out any trade in the dining area,*** *infact such was very well explained to the concerned Officer who visited for so-called inspection, as such* ***coffee machines are the self-service machines, utilized by the employees themselves and such is neither sold nor purchased by any person,*** *and it is needless to say the purpose of placing the purpose in the dining*

> *area, though understanding this fact,* ***the concerned Officer failed to consider and understand the difference between a dining area and a canteen, as*** *such it not even noted in the Inspection Report that, he ever noticed any person purchasing any product or service within the dining area.*
>
> *IV.* *That,* ***the area designated as 'Easting House/Canteen' is merely an dining area with absolutely zero trade, infact the tea/coffee vending machine placed in said dining area is refilled by the third party who directly receives payment from the Applicant company, as such the Applicant Company has made the voluntary free of cost arrangements only and only for the betterment of their employees.***

8. It is clear that the main ingredient to attract the provisions of Section 394(1)(e)(i) is that during the course of trade, the activities which are specified in Part IV of Schedule M or any process or operation connected with any such trade are carried out.

9. The term "trade" is not defined under the MMC Act. In the Concise Oxford English Dictionary the same is *inter alia* defined as follows:-

i. The buying and selling of goods and services.

ii. The practice of making one's living in business, as opposed to in a profession or from unearned income.

iii. Buy and sell goods and services.

iv. Buy or sell (an item or product).

v. Exchange, typically as a commercial transaction.

10. The word "trade" in its narrow popular sense means "ex-change of goods for goods or for money with the object of making profits". In its widest sense, it includes any business carried on with a view to earn profit (see Halsbury's Laws of England, Vol. 32, para 487).[1]

11. The Supreme Court in the case of ***State of Punjab v. Bajaj Electricals Ltd.***[2] considered the scope of term "trade" as follows:-

> "***"Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile****, as distinguished from the liberal arts or learned professions or agriculture.* ***The question whether trade is carried on by a person at a given place must be determined on a consideration of all the circumstances.*** *No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular place. The question, though one of mixed law and fact, must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts.*"
>
> (Emphasis added)

12. In view of the above aspects of the term "trade", it is also required to be noted that the above Inspection Report makes reference to "Eating House Canteen Activity". The "Eating House" is defined under Section 3(ff) of the MMC Act as follows :-

> "(ff) ***"eating-house"*** *means any* ***premises to which the Public are admitted and where any kind of food is prepared or supplied for consumption*** *on the premises* ***for the profit or gain*** *of any person owning or having an interest in or managing such premises;*"

The above definition of "Eating House" also makes it very clear

1 State of Gujarat v. Maheshkumar Dhirajlal Thakkar (1980) 2 SCC 322
2 (1967) SCC OnLine SC 114

that the said activity should be for profit or gain i.e. for monetary benefit.

13. The contention raised is that the said facilities are provided to the employees so that during their meal break they could reheat their food prior to consumption and tea/coffee vending machines are provided which are the self service machines, utilized by the employees themselves and the same is neither sold nor purchased by any person. It is the submission that the same is provided as facilities to the employees and no trade is carried out. It is submitted that the place provided is merely a dining area with absolutely zero trade.

14. In this background, if the Report dated 27th June 2024 on the basis of which the Complaint has been filed is perused, there is nothing to indicate that any activity is observed by which it can be said that "trade" was being carried out.

15. Mr. Chavan, learned Counsel for the Respondent No.2-BMC has pointed out a Circular dated 13th August 2001 and more particularly Page No.13, Column No.13, Clause (c), which reads as under :-

SPACE REQUIREMENTS FOR TRADES ETC, LICENSABLE UNDER THE M.M.C. ACT.

Trade	Minimum requirements of rooms, etc	Minimum Dimensions	Other requirements
13. Tea Shop a. …	 …	 …	 …

b. …	…	…	…
c. Vending Machines (Tea/coffee/ cold drinks/ softy, etc.)	No area restriction	-do-	No drained washing place

16. Mr. Chavan, learned Counsel also pointed out Page No.31 i.e. list of minor and major trades under the Public Health Department and particularly Serial No.12, which reads as under :-

Sr. No.	Name of the trade without use of open flame
12	Catering establishments - Tea Stalls and Tea Shops by using vending machine

17. As already noted herein above, the activity of the company of providing separate dining area for the employees for consuming the food contained in food tiffin carried by them and arranging 2 microwave ovens, tea/coffee vending machines, induction, refrigerator, 6 tables, so that, the employees could reheat their food prior to consumption and tea coffee vending machines for the employees and the guests visiting their office, which are self service machines, clearly shows that there is no material on record showing that any “trade” is being conducted which is the main requirement for attracting Section 394(1)(e)(i) of the MMC Act.

18. Accordingly, the process issued by the learned Judicial Magistrate First Class, 39th Court, Vile Parle, Mumbai by Order dated 23rd

September 2024 in C.C. No. 4894/SS/2024 is without any material on record concerning ingredients of said provision and therefore the same is quashed and set aside.

19. The Criminal Application is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]