IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14831 OF 2024

Marathon Era CHS. Ltd. ....Petitioner

Versus

The State of Maharashtra & Ors. ....Respondents

Mr. Suryajeet Chavan, *for Petitioner.*

Mr. Ashutosh Kumbhakoni, Senior Advocate *i/b. Mr. Akshay P. Shinde, for Respondent No.4.*

Ms. Sulbha Chipade, *AGP for State.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : DECEMBER 24, 2025

ORDER :

1. This matter has been heard from time to time on multiple occasions. At the threshold, Learned Senior Counsel on behalf of Respondent No. 4 pointed out that at the Annual General Body Meeting held on September 20, 2025, the grant of permission to Respondent No. 4 for installation of the internal lift within the flats of Respondent No. 4 had already been approved and that the Petition had become infructuous. However, he submits that the minutes of the meeting have not been circulated by the Society.

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2. The Petition impugns collateral findings by the authorities below, permitting the installation of an internal lift, taking into account the grievances of the society about the danger to the structural safety and other inconveniences that would be occasioned by such installation. In view of the society having passed a resolution approving the installation of lift, the substance of the grievance in the Petition stood undermined.

3. However, to carry out such an important piece of work, certain checks and balances would be necessitated. Therefore, instead of dismissing the Petition as infructuous, the matter was stood over from time to time to enable the society to take instructions on how it would like to proceed further, particularly in view of the general body having resolved to permit the installation of the lift.

4. Today, Learned Counsel for both sides have been heard at some length. Upon hearing the parties, to adjust the competing interests of the parties and to take care of the safeguards and checks and balances that the society would legitimately expect – and which Respondent No.4 fairly states would indeed be provided by Respondent No.4, the following order is passed:-

A] The Respondent No.4 is hereby permitted to install a hydraulic house lift with capacity of four passengers, at the place marked on the plan approved by the MCGM, between flat

nos.3301 and 3401 of the Era IV of Marathon Era CHS Ltd., situate at C.S.No.2/142, Veer Santaji Lane, Off G.K. Marg, Lower Parel, Mumbai 400 013, exclusively for personal and residential use of the Respondent No.4 and her family members on the following conditions:-

(a) The Respondent No.4 shall carry out all the installation work strictly in accordance with the drawings approved by the BMC and under the supervision of engineer namely M/s. Doshi & Co.;

(b) The Respondent No.4 shall submit structural safety Certifications from the said Structural Engineer, as and when the installation is completed;

(c) Not the Petitioner Society, but the Respondent No.4 shall be responsible for the installation work and for any action, if any and if at all, that may be taken in that regard by any statutory authority. The Respondent No.4 shall be responsible for any structural damage, leakage or crack caused to the building of the Petitioner society on account of the installation and/or running of the said house lift and the Respondent No.4 shall repair the same at her own costs. In case if the Respondent No.4 fails to repair and/or restore the damage so caused the Society may carry out such repairs and recover the full cost thereof from the Respondent No.4;

(d) Respondent No.4 shall be responsible for carrying out the installation work and for any action that may be taken

by any statutory authority, and towards this end, Respondent No.4 shall indemnify and keep indemnified the Petitioner-Society and the members of its Managing Committee (past, present and future) in relation to all loss, claims, damages, and proceedings arising in connection with such installation, with particular regard to any structural damage and injury or loss of life in the process;

(e) While Respondent No.4 has already executed an indemnity dated November 21, 2023, which is annexed at page 34 of the Petition, a fresh restated Deed of Indemnity shall be delivered by Respondent No.4 to the Petitioner within a period of one week from the upload of this order on the website of this Court, addressing the aforesaid principles. Learned Counsel for the respective parties shall engage with one another and ensure that the deed of indemnity is in compliance with the aforesaid requirements;

(f) The permission/consent granted by the Petitioner society for the installation is irrevocable, unconditional and continuing, and shall survive any transfer of the flats.

(g) The Respondent No.4 has already deposited with the Petitioner society a total amount of Rs. 6,00,000/- (Rs. Six Lac Only) on 14/07/2023, 27/07/2023, 28/07/2023 and 12/04/2023 respectively, as and by way of a security deposit for carrying out repairs, which work is already complete. The Respondent No.4 shall continue to maintain the said deposit with the Petitioner society as and by way of security deposit for the work of installation;

(h) Considering the nature of the work involved and that this would be the first internal lift that is now being approved (all other internal lifts in the building having formed part of the original building plan) it is considered necessary to direct a sizeable security deposit to be made. In addition to the total sum aggregating to Rs. 6 Lakhs on various dates in 2023 by way of a security deposit for the wider repairs that had been carried out on the premises, a further sum of Rs. 20 Lakhs shall be deposited as a pre-condition for the commencement of the lift installation work. It is only after such deposit is made, that the work of installation of the lift may commence in accordance with the sanctioned and approved design for the lift;

(i) The cumulative amount of Rs. 26 Lakhs shall be retained by the Society even after completion of the work, and until the submission of a Work Completion Certificate by the Structural Engineer designated by Respondent No.4. Such certification shall be effected by the Structural Engineer by ensuring the involvement of all parties including the office bearers of the Society, so that there is no dispute about the integrity or veracity of such certification. Within a period of two weeks of such certification being issued by the Structural Engineer confirming that the installation has not caused any damage or any other hazard that had been apprehended by the Society, a sum of Rs. 13 Lakhs shall stand released to Respondent No.4. The balance sum of Rs. 13 Lakhs shall be retained by the Society for a further period of one year, and

it shall be released on the first anniversary of the release of the first installment of Rs. 13 Lakhs;

(j) Needless to clarify, if from the retained amount any deductions are to be made, the Society shall give notice to Respondent No.4 about its grievances and the amounts necessary to be retained, and the parties would then engage with their respective positions in accordance with law. It is also clarified that the aforesaid deposit of an amount of Rs. 26 Lakhs is a security deposit and does not constitute a limitation of liability. Needless to say, Respondent No.4 has fairly stated that she is willing to indemnify the Society as stated above in this order;

(k) The Respondent No.4 shall carry out the work of installation only between 9:00 A.M. to 1:00 P.M. and 4:00 P.M. to 7:00 P.M. Additionally, no work shall be carried out on any Sunday or public holiday.

5. The contention of the Society that the municipal approval for the said installation has expired is countered by Learned Senior Advocate for Respondent No. 4 who submits a copy of the approval signed on April 26, 2025, which at paragraph 12 clearly indicates that the approval is valid for a further period of one year. Since that leaves a residual period of just four months, the parties shall work on the same expeditiously and cooperate with one another should an extension of the approval be necessitated.

6. Learned Senior Counsel for Respondent No.4, on instructions, confirms that the expected timeline for completing this work is three months. Therefore, the parties are requested to cooperate, so that the work can commence and be concluded within the aforesaid timeframe, so that the continued inconvenience to other members of the Society is avoided.

7. With the aforesaid directions, the Petition is finally ***disposed of***.

8. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]