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Arb.O.P.(Comm.Div.) No.29 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.29 of 2023

M/s.Beauty Etoile Private Limited,
Rep. by its Authorized Representative and Associate Director,
Mr.Devesh Shankar,
Corporate Office at
The Ace, No.1, Corporation Road, Seevaram,
Perungudi, Chennai – 600 096.

...Petitioner

Versus

M/s.Landmark Housing Projects (India) Private Limited,
Represented by its Director,
Mr.T.Udayakumar,
Registered Office at:
No.27, Saravana Street,
T.Nagar, Chennai – 600 017.

...Respondent

Original Petition filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and respondent arising out of the Joint Development Agreement dated 05.09.2018.

For Petitioner	:	Mr.P.S.Raman, Senior Counsel
For Respondent	:	Mr.S.Ramesh



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ORDER

The present petition has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and respondent arising out of the Joint Development Agreement dated 05.09.2018.

2. Mr.P.S.Raman, learned Senior Counsel for the petitioner and Mr.S.Ramesh, learned counsel appearing for the respondent submitted in unison that the dispute has been amicably settled between the parties and the parties have entered into a Joint Memorandum of Settlement dated 28.02.2023. The learned counsels on either side have filed the said Joint Memorandum of Settlement, before this Court and prayed that this petition may be disposed of in terms of that Joint Memorandum of Settlement.

3. The Joint Memorandum of Settlement dated 28.02.2023 reads as follows:

“JOINT MEMORANDUM OF SETTLEMENT

THIS JOINT MEMORANDUM OF SETTLEMENT is executed at Chennai on this the 28th day of February 2023:



BY AND BETWEEN

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M/s.BEAUTY ETOILE PRIVATE LIMITED, a company incorporated under Companies Act 2013, having its Corporate Office at The Ace, No.1, Corporation Road, Seevaram Perungudi, Chennai-600096 acting through its authorized representative Mr.Devesh Shankar, hereinafter referred to as the 'Developer' for themselves, all their officers, directors, executives, managers, employees, agents, divisions, related and subsidiary entities, affiliates, successors and assigns, of the one part.

AND

M/s.LANDMARK HOUSING PROJECTS (INDIA) PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at No. 27, Saravana Street, T.Nagar, Chennai-600001, represented by its Director, Mr.T.Udayakumar, hereinafter referred to as the 'Landowner' for themselves, all their officers, directors, executives, managers, employees, agents, divisions, related and subsidiary entities, affiliates, successors and assigns, of the other part.

WHEREAS:

a. The Parties had entered into a Joint Development Agreement dated 05.09.2018 (hereinafter also referred to as the 'JDA') to develop the Landowner's land measuring about 03.90 Acres (as per patta) situated at Seevaram Village, Sholinganallur Taluk, Kancheepuram District into multistoried housing complex and the development came to be named by the Parties as 'THE ACE' ((hereinafter also referred to as the 'the Project') and more-fully described in the Schedule hereunder and hereinafter referred to as "the Schedule Property");

b. In relation to the said Project, certain disputes arose between Parties with respect to the rights and obligations of the Parties;

c. As the Parties were unable to resolve their disputes through mutual negotiations, the Developer invoked arbitration clause vide its notice invoking arbitration dated 12.11.2022 and in the meantime, have also filed applications under Section 9 and 11 of



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the Arbitration and Conciliation Act, 1996. Similarly, the Landowner has also filed separate applications against the Developer under section 9 of the Arbitration and Conciliation Act, 1996.

d. The Parties, pursuant to mediation/mutual discussions, have now reached a settlement and wish to record the terms of their settlement mutually agreed between them as set out in this joint memorandum of settlement;

e. Each Party has been represented by their Counsel and has been duly apprised of their rights and obligations set out in this joint memorandum of settlement and have entered into this joint memorandum of settlement of their own volition and free will.

f. In pursuance of the aforesaid understanding, the Parties hereto have agreed to briefly record the broad terms and conditions in the manner set out hereinafter.

NOW THIS JOINT MEMORANDUM OF SETTLEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED AND CONFIRMED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Landowner confirms that the Recitals form an integral part of this settlement and confirms that the Developer is entering into this transaction on the basis of the various representations provided by the Landowner.

2. At all times, the Landowner obligations shall act in accordance with the provisions of JDA while determining the rights and obligations of the Landowner. Also, all the rights and obligations of the Landowner and the Developer as prescribed under the JDA shall be construed through the prism of the Settlement terms arrived herein and not in derogation to it.

3. The Landowner agrees that letter of cancellation dated 12.09.2022 and the Cancellation Deed dated 17.09.2022 and registered as Document No.10855 of 2022 with the Sub-Registrar of Neelankarai be rendered null and void ab initio and the Power of Attorney shall stand reinstated and restored as if the Power of Attorney never have been cancelled by the Landowner. Further, the Developer shall under the Power of Attorney to be executed and



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registered afresh by the Landowner shall be entitled to act upon the said Powers of Attorney and do all necessary acts, deeds, matters and things as enumerated under the Power of Attorney without any limitation whatsoever.

4. The Landowner, within 7 (seven) days from receipt of the order from the Hon'ble Madras High Court recording this joint memorandum of Settlement, shall execute a General Power of Attorney ('GPA') authorizing the Developer to continue to perform all the activities as mentioned in clause 12 of the JDA and continue to exclusively deal with Project Land more fully detailed in the Schedule hereunder together with the constructed area developed thereon.

5. In addition to the execution of the General Power of Attorney, the Landowner shall join for execution of any agreement/s of sale and sale deeds, in respect of the Project Land, if necessary and required, at the request of the Developer, notwithstanding the General Power of Attorney executed in favor of the Developer by the Landowner.

6. The Landowner, its successors-in title, legal representatives, assigns, executors or any other person(s) claiming through or under the Landowner specifically undertakes and agrees not to unilaterally revoke/cancel the aforesaid GPA executed in favour of the Developer under any circumstances and/or for whatsoever reason.

7. The Landowner acknowledges that the Developer shall be exclusively entitled to do all or any acts, deeds or things as mentioned in the GPA including but not limited to exclusively execute and register any documentation, customer documentation in its capacity as the Power Agent of the Landowner, throughout the life cycle of the Project or until all the dwelling units are sold to customers/end users and the obligations of the Developer under the JDA are fully accomplished. Consequently, the Landowner shall not take any action/steps that will impeditment execution of such documentation as referred above, by the Developer.



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8. *It is hereby agreed between the Parties that the Developer shall be entitled to complete the construction of the balance portion of the Project at their own convenience and the Landowner shall not be entitled to have any claim or concern over the same in any manner whatsoever. All provisions, including any claim of Landowner with respect to timeline for construction and completion as mentioned in the JDA is hereby waived off and relinquished. The Landowner and/or any person claiming through or under them shall not claim any amount or right in this regard.*

9. *In full and final settlement of all claims and disputes that has arisen between the parties and the Landowner, among other representation and warranties, specifically agreeing to execute/reinstate the General power of Attorney in favor of the Developer, and the Landowner also agreeing not to interfere in the implementation of the JDA by the Developer in any manner whatsoever, the Developer, relying upon the representations and warranties of the Landowner, has agreed to pay, in advance, the balance of the Landowner's 12% revenue share entitlement to the Landowner in the form of additional security deposit as Full And Final Settlement Amount and appropriate the said amount from the future sales for which the Landowner agrees and accept the same as full and final settlement of its remaining revenue entitlement under the JDA.*

10. *In continuance to clause 9 of this Joint Memorandum of Settlement, the Developer shall pay to the Landowner an all-inclusive total amount of Rs. 47,00,00,000/- (Rupees Forty Seven Crores Only) to the Landowner ("Settlement amount"). The Landowner hereby accept the said Settlement amount as the one-time full and final settlement of its entire remaining distributable revenue share including any other claims or entitlements, which the landowner is entitled as accrued or may accrue under the JDA.*

11. *The Landowner hereby declares and acknowledges that it has already received an amount of Rs.96,61,37,218.52/- (Rupees Ninety Six Crores Sixty One Lakhs Thirty Seven Thousand Two Hundred and Eighteen and Fifty Two Paise Only) from the Developer towards the Landowner's revenue share entitlement*



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under the JDA and further that, upon receipt of the afore-said said Settlement Amount of Rs.47,00,00,000/-, the Landowner acknowledges that it would not have any further claim against the Developer under the JDA. In specific, the Landowner hereby agrees that its entire revenue share and other entitlements under the JDA shall stand satisfied in its entirety and that the Landowner shall not have any matter or right, title, interest, claim, whatsoever on the schedule property.

12. It is agreed between the Parties that the afore-said Settlement Amount shall be paid by the Developer to the Landowner in the following manner;

i) A sum of Rs. 4,00,00,000/- (Rupees Four Crores Only) shall be paid by way of existing escrow arrangement within seven days from the date of this Memorandum of Settlement getting recorded by this Hon'ble Court or upon its filing before this Hon'ble Court.

ii) A sum of Rs.1,00,00,000/- (Rupees One Crores Only) shall be payable in the name of Landowner by way of Demand draft simultaneous to execution and registration of General Power of Attorney as consideration thereof.

iii) A sum of Rs.25,00,00,000/- (Rupees Twenty-Five Crores Only) shall be payable by way of Demand draft in the name of Landowner after registration of General Power of Attorney in favor of the Developer.

iv) A sum of Rs 6,00,00,000/- (Rupees Six Crores Only) shall be paid by way of cheque dated 31st of March 2023 bearing No.000716 drawn on ICICI Bank, Adyar Branch in favor of the Landowner which said cheque shall be en-cashed upon submitting No Dues and No Claims certificate towards the Project along with a declaration to cooperate and assist till end of the Project as issued by Architect and Structural Consultant in favor of the Developer, whichever is later. The said cheque shall be duly honored upon completion of the aforesaid compliance.

v) A sum of Rs 6,00,00,000/- (Rupees Six Crores Only) shall be paid by way of cheque dated 4th of July 2023 bearing No.000717 drawn on ICICI bank, Adyar Branch in favor of the Landowner which said cheque shall be encased by Land Owner upon submission of proof regarding finality of the case filed by R.Selvakumar against the Landowner & others in O.A.No. 20 of



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2022, pending on the file of Madras High Court. The said cheque shall be duly honored upon completion of the aforesaid compliance

vi) A sum of Rs.5,00,00,000/- (Rupees Five Crores Only) shall be paid by way of cheque dated 31st of August 2023 bearing No. 000718 drawn on ICICI Bank. The said cheque shall be duly honored on the said date.

13. The parties agree that the aforementioned Settlement amount shall be inclusive of all taxes, cess, statutory charges, duty, fees etc, as may be applicable in connection with the aforesaid settlement transaction. Yet, all the tax obligations on the Schedule property as mentioned in the JDA shall continue to be those of the Landowner.

14. The Landowner agrees and undertakes to close the project revenue accounts standing in its name upon execution of the present joint memorandum of Settlement and accordingly, the Landowner shall inform all the concerned authorities, agencies, mortgagor of its closure and also, endeavor that no liability be placed upon the Developer pursuant to such closure.

15. The Developer and the Landowner hereby agree that the full and final settlement paid in the form of additional security deposit shall be recovered by the Developer along with its accruing interest from and out of the remaining 12% revenue share entitled to Landowner under the JDA. Notwithstanding anything contained to the contrary, the Full and Final Settlement is the final amount to the Landowner under the JDA against his entire revenue share entitlements. The provision for appropriation has been mentioned only for the purpose of maintaining sanctity of the JDA and the same shall not have any impact based on the future sales proceeds of the Project.

16. In lieu of the aforementioned one time full and final settlement amount, The Landowner hereby agree and declare that the entire revenue share entitlements retained by Landowner under the JDA shall stand automatically RELINQUISHED in favor of the Developer in its entirety and that the Landowner and or any one claiming through or under the Landowner shall not have any matter or right, title, interest, claim, whatsoever on the schedule property



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including all benefits deriving on the construction developed thereon.

17. *The Parties agree that upon execution of the present joint memorandum of settlement, the entire sale proceeds, collections, rental revenue, lease revenue or any other revenue arising out of the Project 'THE ACE' shall be the sole and exclusive entitlement of the Developer and the Landowner shall not make any claim whatsoever as against the Developer in this regard.*

18. *The Landowner has represented and warranted to the Developer that there are no prohibitory orders or any attachment orders of or otherwise any liabilities in respect of the Schedule Property or Building or any part thereof, whereby the Landowner is precluded from dealing with the same in the manner whatsoever.*

19. *The Landowner has further represented and warranted to the Developer that it has not created any mortgage, lien, charge, right or any other encumbrances, adverse rights or impediment on the Schedule Property or Building or any part thereof, whereby the Landowner is precluded from dealing with the same in the manner contemplated herein.*

20. *The Landowner undertakes not to deal with the Schedule Property, in any manner whatsoever, during the currency of the JDA and further undertakes to not do any act which would adversely affect the rights of the Developer under the JDA.*

21. *The Landowner represents that it is a Special Purpose Vehicle exclusively constituted for the Schedule property and that there are no other asset(s), business(es) or transaction(s), liability(ies), borrowing(s) in its books of accounts.*

22. *The Landowner has further assured the Developer that there are no third-party dues payable by it to any person/entity and that it has not received any demand notice under Section 8 of the Insolvency and Bankruptcy Code 2016. The Landowner further undertakes to immediately inform the Developer upon the receipt of such third-party notice / demand and also provide its copy and all documents in relation thereof.*



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23. *The Landowner further represents and warrants that there are no third-party rights/assignment/pledge/mortgage/lien created upon the 26.5% revenue share entitled to the Landowner under the JDA and the Landowner hereby unconditionally agree to indemnify the Developer against any loss, damage that may accrue to the Developer on account of such third-party claim(s).*

24. *The Landowner hereby undertake and warrant not to deal with the Schedule property in its capacity as Principal/Title holder until the Project is completed or until the Developer has fully completed its obligations accruing in the Project, whichever is later.*

25. *The Landowner hereby undertakes to put on notice and also indemnify the Developer against any proceedings, claims, disputes, representations in relation to the Schedule Property before any statutory, quasi-judicial or judicial forums and ensure that the Developer's right over the Project are not diluted, compromised, challenged or restrained therewith.*

26. *The Landowner, through itself or its group company, hereby confirm and undertake to file necessary application/memo before the Hon'ble National Company Law Tribunal at Chennai and duly intimate the present joint memorandum of settlement agreed upon between the parties in relation to the afore-said JDA and also take all requisite steps to ensure that the Developer's right on the Project/Schedule Property is not diluted / affected in any manner by any third-party claims or proceedings at any point in time.*

27. *The Parties hereby expressly agree that in the event of any third-party claims, litigation, dispute or legal proceedings have arisen in relation to the Schedule Property and during the currency of the JDA, then the Developer, shall at its liberty, withhold all the payments envisaged under clause 12 above and the said payments will be released / paid by the Developer only upon such claim, litigation, dispute or legal proceedings are finally settled or concluded by the Landowner to the satisfaction and timeline requirements of the Developer.*

28. *The obligation of Developer regarding reconciliation of*



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accounts with Owner as recorded under clause 10.3 & the obligation regarding sharing of customer cost sheet to Landowner as mentioned in clause 15.11 of JDA shall stand withdrawn. Save and except to the obligations recorded in this SETTLEMENT, all or any other obligation(s) of Developer towards the Landowner as mentioned in the JDA or elsewhere shall stand withdrawn.

29. The parties expressly agree that Custody of Original title documents, revenue records, tax receipts, approvals, NOCs, Licenses etc., pertaining to the Project/Schedule Property shall be received by the Developer from the mortgagor upon closure of the Project Loan and the said original title documents along with other original documents pertaining to the Project shall permanently be retained by Developer and handed over to the Association that will be formed by Developer upon completion of the Project.

30. The Parties hereby give up and waive all claims and counter claims made in the course of the arbitration proceedings including those specified in the legal notices and notice invoking arbitration and all other allegations and/or claims for compensation(s) made or claimed as against each other on or before the date of execution of this Memorandum of Settlement and all the connected communications thereto. Save to the extent of claims mentioned under this Memorandum of Settlement, the parties shall hereafter have no claim against each other of whatsoever nature.

31. The Landowner expressly affirms that the corporate insolvency resolution process initiated against M/s. Landmark Housing (Projects) Chennai Limited on the file of hon'ble National Company Law Tribunal does not in any manner affect or have bearing on the Schedule Property, the operations of the Developer over the project.

32. The Landowner undertakes not to make any changes to its constitution, board or business until obtaining completion certificate, without obtaining prior written consent from the Developer.

33. The Landowner undertakes to execute any documentation and provide the necessary co-operation to fulfill the objectives



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enumerated in this settlement and provide every support required for the Developer to successfully complete the Project.

34. The Landowner has represented that it is, absolutely and exclusively, entitled to negotiate, finalize and execute the present joint memorandum of settlement along with other transaction documents with the Developer and that all the requisite consent / approval of the Board has been obtained by it in this regard.

35. The Landowner further represent that there are no approvals, consents, No objections or Board Resolutions required from any other party/entity/authority/agency etc., other than the Landowner for consenting to the terms of this Joint Memorandum of Settlement.

36. The Landowner shall appoint two or more representatives of the Developer as authorized signatory/ies of the Landowner company (by way of a resolution passed by the board of Landowner company) to jointly or severally represent, sign and execute any documentation(s) including to register customer documents before concerned Sub-Registrar/Registrar of assurances in relation to the Project and the said authorization board resolution shall be effective until February 2024 or Completion of entire obligations on the Project Land, whichever is later. The Landowner unconditionally undertakes not to cancel, modify or change the said authorization without prior written consent from the Developer. The Landowner shall submit soft copy of its letter head to the Developer and further undertake to sign the resolution either by its company secretary and/or directors and deliver such number of copies of the above resolution as and when required by the Developer.

37. The Landowner shall not grant any rights to any person or do anything/execute any document which will result in derogation or breach of the rights granted under the aforesaid JDA and under this joint memorandum of settlement and shall keep the Developer indemnified against all losses or claims arising out of breach of any warranties by the Landowner.

38. Neither Party shall be entitled to terminate this memorandum of settlement.



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39. *The provisions of this memorandum of settlement shall not be modified or amended except by mutual consent of the Parties recorded in writing. This memorandum of settlement shall be deemed to be modified to the extent required to remain in conformity with the applicable laws, approvals and as may be required pursuant to any modification of any policy/order issued by the applicable government authority.*

40. *The Landowner shall not be entitled to assign their rights under this memorandum of settlement.*

41. *The Land Owner agree and undertake to keep the Developer and its employees/officers fully indemnified and hold harmless from and against all the consequences of breach of any of the terms, conditions, statements, undertakings, representations, etc., of this settlement as also of any of its representations or warranties not being found to be true at any point of time, including any claims, actions, suits, legal proceedings, damages, liabilities, costs, expenses etc., faced, suffered and/or incurred by the Developer. In the event of any cost, expenses, loss, damage suffered by the Developer due to any claims, actions, suits, legal proceedings, damages, liabilities, costs, expenses made upon the Developer on account of any warranties, representations, fraud, deed, act and/or omission etc., of the Landowner as set out in the settlement or in relation to the Project, or any third-party claim on the Developer on account of any arrangements contemplated between the parties, the Landowner undertakes to pay 100% of such amount to the Developer as shall be demanded within 7 (seven) days of demand being made. The Landowner shall indemnify and hold harmless the Developer due to any defect in the title of the Landowner including but not limited to any cost, expenses, loss, damage or liabilities.*

42. *The Landowner further agrees that in the event of the Project being stalled or sale and collection is prohibited or if the accounts pertaining to the Project standing in the name of the Developer is frozen due to any proceeding against the Landowner and/or its holding or group companies and/or if the Landowner endeavor to cancel the general power of attorney or manage to cancel the same, in such event the Landowner shall be liable to pay*



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liquidated damage calculated at rate of 2% of total projected revenue per day till resumption of the project, sale or restoration of POA as case may be. In addition to the liquidated damage/penalty, the Landowner shall also be liable to face consequence for delay of delivery of project if project is stalled for reason as mentioned above or breach of terms and conditions as mentioned in JDA as co-promoter of the project.

43. It is hereby agreed and declared that each Party has undertaken obligations and has rights specified in this memorandum of settlement on its own account and on a principal-to-principal basis and not on behalf of, or on account of or as agent of any of them or of anyone else. The relationship as embodied herein is neither a partnership nor a joint venture nor an association of persons.

44. This memorandum of settlement shall be executed in duplicate, one for the respective Parties.

45. The Parties agree that an Award/Order on consent terms may be passed on the basis of this Joint Memorandum of Settlement.

46. In the event of any party found in breach or violation of the terms concluded under this Joint Memorandum of Settlement then the same shall entail the other party to invoke Contempt of court.

SCHEDULE OF PROPERTY

All that piece and parcel of lands comprised in new patta Survey Nos. 50/1, 51/1A5, 51/1A6, 51/1A7, 51/20, 51/22, 51/1B1D1, 51/1B1D2, 51/1C1A2, 51/1C1C, Old document Survey Nos. 50 part, 51/1A part, 51/1A1D part, 51/1B1 part, 51/1C1 part, 51/1A1D part admeasuring 3.8120 acres (ie., 1,66,050.72 Sq. feet) as per document (and 3.90 acres as per patta) or thereabouts out of 4.2399 acres (excluding 18,643.24 sq.ft., ~ 0.4279 acres gifted for OSR), less the extent of 4289 Sq.ft or undivided share already conveyed, situated at Corporation Road, Perungudi, Seevaram Village, Sholinganallur Taluk, Kancheepuram District, within the limits of Greater Chennai Corporation, Ward No.186, bounded on the :



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NORTH BY : Village No.113, Perungudi & Land in S.Nos.50/2, 51/21 & 51/1C1A & 51/1C1B,
SOUTH BY : Land in S.Nos.51/1B1C to 1B1C8, 51/1C1B, Corporation Road in S.No.51/1B2 and S.Nos. 51/1B1D1 part and 51/1C1C part (OSR land).
EAST BY : Land in S.Nos.47, 48, 50/2, 51/1C1B, 51/1B1D1 part (OSR land).
WEST BY : Land in S.Nos.51/1A2, 51/1A1D1A1, 50/1A4 and 51/1B1C to 1B1C8.

and lying within the Registration District of Chennai South and Sub-District Registration District of Neelankarai.”

4. The said Joint Memorandum of Settlement is recorded and the same shall form part of the order.

5. Considering the above submissions made by the learned counsel on either side, this Court is inclined to dispose of this petition in terms of the aforesaid Joint Memorandum of Settlement. Accordingly, this petition is disposed of in terms of the Joint Memorandum of Settlement dated 28.02.2023 entered into between the parties.

02.03.2023

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Index : Yes/No

Speaking Order (or) Non Speaking Order

Note to Registry: Upload the order on 03.03.2023



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KRISHNAN RAMASAMY, J.

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