

**OFFICE OF THE COMMISSIONER, VAT  
DEPARTMENT OF TRADE AND TAXES  
GOVERNMENT OF N.C.T. OF DELHI  
VYAPAR BHAWAN, NEW DELHI**

No.39/CDVAT/2013/ 173

Dated: 08-07-2013

J.M.C. Projects India Ltd.  
331, Somdutt Chamber-II  
9, Bhikaji Cama Place, New Delhi-110016

**ORDER**

|                            |   |   |
|----------------------------|---|---|
| Present for the Applicant  | : | Sh. Raj K. Batra, Advocate                      |
| Present for the Department | : | Sh. T.C. Sharma,<br>Departmental Representative |

The above named applicant has filed an application under section 36A (2) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") for issue of lower deduction Certificate in respect of works contract awarded to it from South MCD for "covering of Nallah from Pushp Vihar, Press Enclave road passing through Sheikh Sarai-Chirag Delhi- Panchsheel Enclave- GK-I- Andrews Ganj upto Ring Road behind Police Station, Defence Colony (except the stretch of Nallah in GK-I in a length of 1000 mtr.) under JNNURM for providing parking/road cum parking under the jurisdiction of MCD" vide acceptance letter no. D/EE (Pr)-I/CNZ/12-13/383 dated 14.08.2012 for Rs.163,20,52,681/- (Rs. one hundred sixty three crore twenty lakh Fifty Two thousand six hundred eighty one only). Further, the agreement was signed on 24.09.2012 between South Delhi Municipal Corporation (as employer) and J.M.C. Projects India Ltd. (as contractor).

2. The facts as stated in the application are that the applicant company is a company registered under the Indian Companies Act, 1956 and having its registered office at A-104, Shapath-4, opp. Karnavati Club, S.G. Road, Ahmadabad-380051. Further, the company has its branch office at 321, Somdutt Chamber-II, 9, Bhikaji Cama Place, New Delhi-110066 and registered with this department in special zone (TIN no. 07392011601).

3. Sh. Raj K. Batra, counsel for the applicant appeared and stated that the said contract of Rs.163,20,52,681/- (Rs. one hundred sixty three crore twenty lakh Fifty Two thousand six hundred eighty one only) allotted to the applicant has been sub-contracted to Panasian-Rapid joint Venture through a agreement dated 18.09.2012. He stated that from this agreement in article 3, it was agreed between contractor and sub-contractor (i.e. JV) that 40% of the payments received from the MCD shall be immediately on receipt be transferred to the Panasian-Rapid JV account without any delay, demur or objection by J.M.C. Projects India Ltd. It was further agreed that from the remaining 60% of amount received from MCD, J.M.C. Projects India Ltd. shall retain 3% of the total received payment as fees for supervisions of the project works, while 57% of total received payment shall be utilized for making payment of taxes, duties, VAT etc. and for procurement of Cement, Steel and RMC. The payment for procuring Cement, Steel and RMC shall be released immediately after receipt of the advice from the JV. Taxes, duties, VAT and any other

statutory payments shall be made by J.M.C. Projects India Ltd. immediately once it falls due.

The counsel also submitted that no tax would be leviable on J.M.C. Projects India Ltd. as entire tax on 100% of the value received from South Delhi Municipal Corporation would be payable in the hands of the aforesaid constituents.

4. The Departmental Representative pointed out that the applicant is retaining 60% and the sub-contractor is given 40% of the payments received from the contractee, so, the liability of the dealer is 60% and not 3% as claimed by the counsel of the applicant. He further stated that the liability of the dealer works out to 2.4% so to meet out any eventuality it would be safer to deduct at least 2.5% TDS.
5. I have heard the arguments put forth from both sides and the documents on record. Keeping in view the circumstances of the case, certificate for deduction of TDS at a lower rate of 2.50% is issued to the applicant as per provisions of Section 36A (2) of the DVAT Act, 2004 in respect of work order awarded to it by the South Delhi Municipal Corporation for Rs.163,20,52,681/- (Rs. one hundred sixty three crore twenty lakh Fifty Two thousand six hundred eighty one only). Hence, South Delhi Municipal Corporation is instructed to deduct TDS @ 2.50% instead of 4% on the gross value of the subsequent payments to be made to the applicant J.M.C. Projects India Ltd., 321, Somdutt Chamber-II, 9, Bhikaji Cama Place, New Delhi-110066. This order is subject to the condition that the applicant shall strictly follow all legal provisions including the provisions relating to TDS as provided under Section 36A of the DVAT Act, 2004 for transactions between the applicant and its sub-contractor i.e. Panasian-Rapid JV.

Further this certificate is issued with the condition that the applicant shall submit photocopies of invoices, TDS payment challans, TDS certificates etc. along with a monthly statement in the following format to Joint Commissioner (Special Zone) within seven days from the end of each calendar month:

| 1       | 2  | 3   | 4                           | 5   | 6   |
|---------|--|---|-----------------------------|---|---|
| Sl. No. | Name & Address of Sub-Contractor/ Constituents | Regn. No./TIN of the Sub-Contractor/ Constituents | Gross value of the contract | Amount Credited /paid to Sub-Contractor/ Constituents | TDS deducted from the amount credited/ paid to sub-Contractor /constituents |
|         |  |   |                             |   |   |

The same shall be submitted till the finalisation of all payments made under the said contract, including the payments made on account of settlement of disputes through arbitration. A copy of the same shall also be submitted to South MCD to enable it to deduct lower TDS.

**(Prashant Goyal)**  
**Commissioner, VAT**

Copy for information and necessary action to:

1. Applicant
2. South MCD, O/o Executive Engineer Project-I, Central Zone, Shiv Mandir Marg, Lajpat Nagar, New Delhi-110024
3. Addl. Commissioner (Law & Judicial)
4. Joint Commissioner (Special Zone)
5. Joint Commissioner (System)
6. Value Added Tax Officer (Policy Branch)
7. Guard File

**(Prashant Goyal)**  
**Commissioner, VAT**