

राष्ट्रीय राजमार्ग एवं अवसंरचना विकास निगम लिमिटेड

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
तीसरी मंजिल, पीटीआई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001



National Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India
3rd Floor, PTI Building, 4-Parliament Street, New Delhi-110001, +91 11 23461600, www.nhidcl.com

(भारत सरकार का उद्यम)

(A Government of India Enterprise)

WITHOUT PREJUDICE

NHIDCL/Sikkim/NH-717B/Rhenock-Menla/Pkg-IIIA/2224

Date: 09.02.2024

To,

The Joint Managing Director (Tender/Deposit),
M/s. U.P. State Bridge Corporation Limited
House No. 6/15, Matchong Post,
East Sikkim- 737106.

Sub: Construction of 2 Laning with paved shoulder of new Greenfield alignment from Chochenpheri at Km. 52.000 to Helipad near Menla at Km. 82.000 of Rhenock-Menla spur (NH-717 B) Package-III A on EPC basis under SARDP-NE Phase 'A' in the State of Sikkim- **Declaring the EPC Contractor M/s. U.P. State Bridge Corporation Limited as 'Non-Performer'-reg.**

Ref.:

- i. AE letter no. AE/Rhenock/NH-717B/EPC-CONT/180 dated 18.11.2023-Regarding mobilize adequate manpower & Machineries at project site.
- ii. AE letter no. AE/Rhenock/NH-717B/PKG-IIIA /330 dated 16.11.2023 - Regarding Mobilization plan to complete the project work within the schedule completion date.
- iii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/ 2023-24/396 dated 10.11.2023- Regarding Project Review meeting.
- iv. EPC Contractor no.141/PM/UPSBC-SIKKIM/717B/PKG-IIIA/2023-24 dated 01.11.2023- Regarding status of hindrance free land.
- v. EPC Contractor no.91/PM/UPSBC-SIKKIM/717B/PKG-IIIA/2023-24 dated 28.10.2023- Reply of cure period notice.
- vi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/AE /2023-24/359 dated 23.10.2023- Regarding verification of hindrance free land.
- vii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/350 dated 16.10.2023- Regarding ED (P) tour Note for expedite the project progress.
- viii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA /2023-24/339 dated 11.10.2023- Cure period Notice.

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- ix. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/320 dated 22.09.2023- **Regarding ED (P) tour Note for expedite the project progress.**
- x. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/310 dated 19.09.2023- **Notice for recovery of damages due to delay in achievement of project Milestone-II.**
- xi. AE letter no. AE/Rhenock/NH-717B/PKG-IIIA/318 dated 18.09.2023- **Reminder for submission of balance design & drawings.**
- xii. AE letter no. AE/Rhenock/NH-717B/PKG-IIIA/312 dated 11.09.2023- **Regarding confirmation for staging and shuttering material available on project site.**
- xiii. NHIDCL HQ Circular no. NHIDCL/Legal/orders & Circular/2022/459 dated 05.09.2023. **Standard Operating Procedure to Debar/Blacklist, terminate and declare as a nonperformer.**
- xiv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/263 dated 28.08.2023- **Regarding ED (P) tour Note for expedite the project progress.**
- xv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/250 dated 17.08.2023- **Notice for Slow Progress of work.**
- xvi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/098 dated 25.05.2023- **Regarding ED (P) tour Note for expedite the project progress.**
- xvii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/AE/2022-23/084 dated 18.05.2023- **Regarding Minutes of project Review meeting.**
- xviii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/AE/2022-23/086 dated 18.05.2023- **Regarding relaxation in Schedule-H as per NHIDCL HQ Office Order dated 09.01.2023.**
- xix. RO Gangtok letter no. NHIDCL/RO-SIKKIM/Technical/182 dated 18.05.2023- **Regarding warning for lack of progress.**
- xx. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/067 dated 10.05.2023-**Regarding approval for EOT by 271 days.**
- xxi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2022-23/066 dated 10.05.2023- **Regarding ED (P) tour Note for expedite the project progress.**
- xxii. RO Gangtok letter no. NHIDCL/RO-SKM/Rhencok-Menla/PKG-IIIA/2023/132 dated 08.05.2023- **Regarding MOM of Personal Hearing held on 03.05.2023.**
- xxiii. RO Gangtok letter no. NHIDCL/RO-SIKKIM/Technical/100 dated 28.04.2023- **Notice for Personal hearing.**
- xxiv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/041 dated 28.04.2023- **Notice for personal Hearing.**
- xxv. RO Gangtok letter no. NHIDCL/RO-SIKKIM/Technical/96 dated 27.04.2023- **Notice for removal of Design Director of the EPC Contractor.**

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- xxvi. AE letter no. AE/Rhenock/NH-717B/PKG-IIIA/271 dated 11.04.2023- Regarding repeated submission of design & drawing and Plan & Profile.
- xxvii. AE letter no. AE/Rhenock/NH-717B/PKG-IIIA/271 dated 11.04.2023- Regarding No major activity found at Site from Km 52+000 to Km 72+000.
- xxviii. EPC Contractor no.07/PM/UPSBC-SIKKIM/717B/PKG-IIIA/2023-24 dated 06.04.2023- Reply to warning for lack of progress.
- xxix. RO Gangtok letter no. NHIDCL/RO-SIKKIM/Technical/1426 dated 18.03.2023- Regarding warning for lack of progress.
- xxx. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIIA/2022-23/815 dated 24.03.2023-Regarding Para wise comments of EPC Contractor's reply dated 17.12.2022 towards the Show Cause Notice issued on 24.11.2022.
- xxxi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/AE/2022-23/798 dated 15.03.2023-Regarding Tour Note of D(T) for expedite the project progress.
- xxxii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/781 dated 07.03.2023-Muck dumping locations.
- xxxiii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/772 dated 04.03.2023-Regarding use of hand packed wall on the edge of RoW.
- xxxiv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/717 dated 03.02.2023- Regarding approval for EOT by 271 days.
- xxxv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2022-23/704 dated 31.01.2023- Regarding ED(P) tour Note for expedite the project progress.
- xxxvi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/691 dated 25.01.2023- Regarding marking of RoW pillars in diverted Forest Land.
- xxxvii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/666 dated 14.01.2023- Regarding target for BSM work.
- xxxviii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2022-23/609 dated 26.12.2022- Regarding ED(P) tour Note for expedite the project progress.
- xxxix. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/573 dated 10.12.2022- Regarding target for CTSB and BSM work.
- xl. EPC Contractor no.205/PM/UPSBC-SIKKIM/717B/PKG-IIIA/2022-23 dated 22.12.2022- Reply of cure period notice.
- xli. EPC Contractor no.197/PM/UPSBC-SIKKIM/717B/PKG-IIIA/2022-23 dated 17.12.2022- Reply of SCN for declaring the EPC Contractor as a non-performer.
- xl. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/541 dated 24.11.2022- Cure period notice.

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- xl. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/540 dated 24.11.2022- Notice to declare the EPC Contractor as non-performer.
- xli. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIIA/2022-23/550 dated 28.11.2022- Regarding NOC for setting up explosive and blasting permission.
- xlii. Ministry letter no. standard operating procedure to debar/penalize/declare the Contractor/Concessionaire as Non-Performer in National Highways and other centrally sponsored road projects. RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021.

NHIDCL(National Highways Infrastructure & Development Corporation Limited) and M/s. U.P. State Bridge Corporation Limited (hereinafter referred as “the EPC Contractor”) signed an EPC Agreement on the 28th October 2020 for the work of “Construction of 2-Laning with Paved Shoulder of New Greenfield Alignment from Chochenpheri at Km 52+000 to Helipad near Menla at Km 82+000 of Rhenock - Menla Spur (NH-717B) Package-IIIA on EPC Basis under SARDP-NE Phase 'A' in the State of Sikkim”, with construction period of 36(Thirty Six) Months commencing from the Appointed date. The Appointed date for the project was fixed as 10th December’ 2020.

2. As per the Clause 10.3.(i) of EPC Contract Agreement, the EPC Contractor shall construct the project highway as specified in Schedule-B and Schedule-C, and in conformity with the specifications and standards set forth in schedule-D and in accordance with the schedule set forth in schedule-J. As per the Schedule-J of the Contract Agreement the construction of the project was to be completed in all aspects within 36 months from the Appointed Date. In the instant case, the Appointed Date was declared as 10.12.2020, meaning thereby that the EPC Contractor was obliged to complete the construction as per schedule & revised milestone date by 09.12.2023 & 05.09.2024 respectively and accordingly the Milestones date falls on along with targeted financial progress (%) as per Schedule-J are furnished below:

Sr. No.	Project Milestone as per Schedule-J of CA	Days (from the appointed date i.e. 10.12.2020)	Schedule Milestone date	Revised Milestone date EOT-I	Financial Progress on 19.11.2023
i.	Project Milestone-I (5% of the Contract Price)	382 Days	26.12.2021	23.09.2022	23.10.2022 (within Grace period)
ii.	Project Milestone-II (30% of the Contract Price)	657 days	27.09.2022	25.06.2023	24.04%
iii.	Project Milestone-III(70% of the Contract Price)	930 days	27.06.2023	24.03.2024	-
iv.	Scheduled Completion (100% of the Contract Price)	1095 days	09.12.2023	05.09.2024	-

3. **WHEREAS**, the progress of work has been dismal since start of the project and the EPC Contractor has able to achieve Physical Progress of 28.94% only as on 19.11.2023, against desired progress of 39.67% as per their own revised work programme. Further to mention that the EPC contractor had already been provided the required hindrance free land in

June 2022 to execute the work. In spite of it due to lack of resources and improper planning the progress could not be achieved despite of several Notices issued by Authority's Engineer and Authority. The land required for executing balance work was 14.43 km which was available.

4. **WHEREAS**, the EPC Contractor has not taken the critical activity seriously. As per provision of Schedule-J, the EPC Contractor must start the work on all viaducts prior to completion of Milestone-II. However, the EPC Contractor has taken up work only in 3 out of 24 nos. viaduct work as on date.

5. **WHEREAS**, Design & Drawing of 3.340Km (3 nos.) out of 4.470 Km (24 nos). of viaducts are still pending with the Contractor. It has become evidently clear that the Contractor has failed to comply the directions of Authority regularly and has resorted to only giving false assurances. The EPC Contractor was provided 18 km of hindrance free land between km 52 to Km 67 and Km 79 to Km 82 after cutting of trees in the month of June 2022, wherein 18 viaducts were to be constructed. Nevertheless, the design and drawing of these viaducts were submitted by EPC contractor only in Jan- May 2023. This shows that the EPC contractor failed to submit the required design and drawing within 90 days of providing hindrance free land as per the clause 10.2(iv) (h) of CA.

6. The EPC Contractor has failed to achieve the progress as per its own work program. The status of the physical & financial progress is tabulated below from the appointed date till 28.11.2023: -

Month	As achieved actually		Target progress as per approved revised work programme		Difference (B-D)
	Physical Progress (A)	Financial Progress (B)	Physical Progress (C)	Financial Progress (D)	
From 10.12.2020 to 31.12.2021	0.57%	0.00%	0.81%	0.81%	-0.320%
Jan-2022	0.57%	0.49%	0.99%	0.99%	-0.5%
Feb -2022	0.0%	0.49%	1.33%	1.33%	-0.84%
Mar-2022	2.76%	0.49%	2.06%	2.06%	-1.57%
Apr-2022	2.89%	0.49%	3.14%	3.14%	-2.65%
May-2022	2.89%	0.49%	4.22%	4.22%	-3.73%
Jun-2022	2.89%	2.14%	4.64%	4.64%	-2.5%
July-2022	2.89%	2.14%	4.73%	4.73%	-2.59%
Aug-2022	3.85%	3.21%	4.85%	4.85%	-1.64%
Sep-2022	4.30%	3.21%	5.34%	5.34%	-2.13
Oct-2022	5.32%	5.20%	5.88%	5.88%	-0.68%
Nov-2022	7.07%	5.20%	7.14%	7.14%	-1.94%
Dec-2022	11.97%	6.29%	9.20%	9.20%	-2.91%
Jan-2023	12.06%	10.55%	11.47%	11.47%	-0.92%
Feb-2023	16.53%	10.55%	14.74%	14.74%	-4.19%
March-2023	16.70%	15.13%	18.13%	18.13%	-3.00%
April-2023	21.17%	15.13%	23.26%	23.26%	-8.13%
May-2023	23.92%	16.91%	28.62%	28.62%	-11.71%

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June-2023	23.92%	18.86%	30.39%	30.39%	-11.53%
July-2023	25.16%	21.37%	31.41%	31.41%	-10.04%
August-2023	25.28%	21.37%	33.22%	33.22%	-11.85%
September-2023	27.70%	21.37%	35.50%	35.50%	-14.13%
October-2023	28.70%	21.37%	39.67%	39.67%	-18.30%
28th Novemeber-2023	28.94%	24.04%	39.67%	39.67%	-18.30%

7. **WHEREAS**, the physical progress is dismal despite favorable weather conditions during the months of October-2021 to May-2022, October-2022 to 30th June, 2023 & September 2023 to till date indicating creeping rate of progress as below:-

Month	Achieved Progress (CTSB)	Achieved Progress (BSM)	Achieved Progress (BC)
From 10.12.2020 to 31.12.2021	0.0 Km	0.0 Km	0.0 Km
Jan-2022	0.0 Km	0.0 Km	0.0 Km
Feb-2022	0.0 Km	0.0 Km	0.0 Km
Mar-2022	0.0 Km	0.0 Km	0.0 Km
Apr-2022	0.0 Km	0.0 Km	0.0 Km
May-2022	0.0 Km	0.0 Km	0.0 Km
Jun-2022	0.0 Km	0.0 Km	0.0 Km
July-2022	0.0 Km	0.0 Km	0.0 Km
Aug-2022	0.0 Km	0.0 Km	0.0 Km
Sep-2022	0.0 Km	0.0 Km	0.0 Km
Oct-2022	0.0 Km	0.0 Km	0.0 Km
Nov-2022	0.0 Km	0.0 Km	0.0 Km
Dec- 2022	0.200 Km	0.0 Km	0.0 Km
Jan- 2023	0.280 Km	0.0 Km	0.0 Km
Feb-2023	0.530 Km	0.0Km	0.0Km
March-2023	0.0 Km	0.0Km	0.0Km
April-2023	4.010 Km	0.0 Km	0.0 km
May-2023	0.0 Km	0.540	0.0Km
June-2023	0.050Km	0.0Km	0.0Km
July-2023	0.00Km	0.0Km	0.0Km
August-2023	0.00Km	0.0Km	0.0Km
September-2023	0.890Km	0.0Km	0.0Km
October-2023	0.800 Km	0.0Km	0.0Km
28 th November-2023	1.080 Km	0.00 Km	0.00Km
Total	7.840 Km	0.540Km	0.0Km

8. As per Clause 10.2 (iv) (h) of Article 10 of the Contract Agreement, "The EPC Contractor shall ensure that all the designs and drawings shall be approved by the Authority's Engineer within 90 (ninety) days from the Appointed date.

- i. The EPC Contractor has failed to get the approval of design & drawings within specified time. The detailed status of design & drawing as on date is tabulated below:-

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Sr. No	Particular (a)	Stretch from km to km (b)	Date of handing over hindrance free land (c)	Date of submission of Plan Profile/Design and drawing (d)	Nos. of delay days from 90 days after providing of hindrance free land (c)-(d)-90
i.	Plan & Profile	Km 52.000 to Km 67.000 & 79.000 to 82.000 (18Km)	31.05.2022 (60%)	14.01.2023	138 days
		Km 52.000 to 82.000 (except km 54.000 to 56.000 due to re-alignment proposal)	01.08.2022 (93.33%)	14.01.2023	76 days
ii.	Viaduct	Km 52.000 to Km 67.000 & 79.000 to 82.000 (18Km)	31.05.2022 (60%)	Total 18 nos. viaduct falls between km 52+000 to Km 67+000 as per Schedule-B of CA. However, the EPC Contractor has failed to submit the design & drawing within stipulated time.	435 days
iii.		Km 52.000 to 82.000 (except km 54.000 to 56.000 due to re-alignment proposal)	01.08.2022 (93.33%)	Design & Drawing of 3.340 Km of viaduct out of 4.470 Km are still pending with the EPC Contractor.	373 days

9. **WHEREAS**, PMU-Rhenock vide letter ref. (xliii) has issued a Show Cause Notice to declare the EPC Contractor i.e., M/s U.P. State Bridge Corporation Limited, as "Non-Performer", in light of the provisions stipulated in and applicable law of Contract Agreement by giving 15 days' time to furnish its written explanation.

10. **WHEREAS**, the EPC Contractor vide letter ref. (xli) has furnished their written explanation and the reply of the EPC Contractor was found not satisfactory.

11. **Therefore**, a personal hearing was offered to the EPC Contractor vide letter ref. (xxiii & xxiv) at NHIDCL, RO-Gangtok in accordance to MoRTH Circular dated 06.10.2021. Vide Conference meeting regarding personal hearing was conducted on 03.05.2023 under the chairmanship of ED(P), RO-Gangtok to review the progress of work. In the personal hearing meeting, several issues were discussed and directions/targets were given to the EPC Contractor, vide OM No. NHIDCL/RO-SKM/Rhenock-Menla/Pkg-III A/2023/132 dated 08.05.2023 (referred at above (xxii)). Nonetheless, none of the directions/targets were

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fulfilled by the EPC Contractor and it has failed to expedite the progress of work. The directions & status of work as on 07.11.2023 submitted is tabulated below: -

Sr. No.	Personal Hearing directions/targets given to the EPC Contractor on 03.05.2023	Status as on 07.11.2023	Days from the Minutes of Meeting 03.05.2023.
i.	Team Leader of the AE apprised about the progress of different items of the work wherein ED (P) expressed his dissatisfaction on the progress of work being executed by the EPC Contractor on Rolep-Menla section (Pkg IIIA) of NH. 717B. It was mentioned that the Physical and Financial progress achieved as on date i.e., 03.05.2023 for the said project is 20.32% and 15.13% respectively which is abysmally slow despite the project work being commenced from 10. 12.2020.	<p>The physical and financial progress is 28.78% & 21.37% respectively as on 07.11.2023.</p> <p>As per the approved work programme, the EPC Contractor was required to achieve 16.41% & 16.41% physical and financial progress respectively in 6 months (i.e., May,2023 to October,2023)</p> <p>However, The EPC Contractor has achieved only 7.61% and 6.24% of physical and financial progress respectively in 6 months (i.e., from 03.05.2023 to 31.10.2023).</p> <p>The EPC Contractor's progress is not up to the par as per its own work programme.</p>	192 days (from 03.05.2023 to 16.08.2023)
ii.	ED(P) informed the Managing Director of the EPC Contractor, M/s UP. State Bridge Corporation Limited that Design & Drawing of only 09 out of total 24 viaducts have been got approved till date which shows poor performance and sheer negligence on the part of the EPC Contractor. It was also brought out by ED (P) that out of the 09 viaducts having its Design and drawings approved, work on only 03 viaducts has been started as on date. In this regard, MD, M/s U.P.S.B.C.L mentioned that the work in the balance 06 viaducts shall be started in a month's time which was outrightly rejected by ED (P) owing to the crucial importance of the project work in question,	<p>Only 03 nos. out of 24 nos. viaducts work have been started by the EPC Contractor. Further, the EPC Contractor has not started any viaduct activity on remaining viaducts. Also, the Design & Drawing 3.340 Km out of 4.470 km of viaducts are still pending with the EPC Contractor. The EPC Contractor has submitted 12 nos. of viaduct design & drawing for review/approval to the AE from 03.05.2023 to 07.11.2023. Hence, total 21 nos. out of 24 nos. design & drawing have been submitted by the EPC Contractor to Authority's Engineer for approval/review as on date.</p> <p>This clearly establishes the lackadaisical approach of the EPC Contractor in executing the project.</p>	
iii.	ED (P) asked the Contractor to submit the work program for the work to be executed in the next 15 days to the AE and the Contractor was instructed to achieve the Physical and Financial Progress of	<p>The EPC Contractor has achieved only 3.6% Physical & 1.78% financial progress respectively by end of May' 23.</p> <p>The EPC Contractor has not submitted any work program as directed by ED(P).</p>	

	minimum 12% by the end of May' 23. It was also made clear to the EPC contractor that if the set target is not achieved further payment of the Contractor shall not be released.	This is serious lapse from the EPC Contractor.	
iv.	ED (P) also raised concerns over negligence shown by the Contractor in obtaining permissions required from the Concerned Authority for blasting from Km 52.000 to Km 72.000 of the said project section as the Contractor is yet to submit its applications for the requisite permits. ED (P) also mentioned that such proposals take almost a year for approval and that the Contractor should take proactive steps for submission of application to the Concerned Authority.	PMU-Rhenock has already provided the requisite documents required for blasting permission to the EPC Contractor vide letter ref. (xlii). The EPC Contractor on 05.06.2023 has applied for the blasting permission and the proposal is under consideration with the PESO department, Kolkata for the final approval.	
v.	ED (P) emphasized on expediting the overall progress of the project work so that the project can be completed within the stipulated time period.	The overall progress of the work is very poor. Also, the EPC Contractor has failed to achieve the extended Milestone-II (30%) due to inadequate mobilization of resources and not a single target could be achieved by the EPC Contractor.	

12. It is pertinent to mention that the EPC Contractor has taken up the project work from two ends i.e., km 52+000 to Km 67+000 (15km) and Km 67+000 to Km 82+000 (15km). In this context, the HMP are yet to be established by the EPC Contractor for the stretch between Km 52+000 to km 67+000. The EPC Contractor has established/commissioned only 01 no. RMC, 01 no. of BSM/WMM plant and 01 no. for the project work, which is insufficient to complete the project work in stipulated time frame. Further, PMU-Rhenock has already provided the requisite documents required for blasting permission to the EPC Contractor vide letter no.550 dated 28.11.2022. However, the EPC Contractor has failed to procure the necessary permission till date for the stretch between km 52+000 to km 72+000. Therefore, the EPC Contractor has failed to perform due to continuous mismanagement, own failures, lack of planning and resources of the work.

13. MD, NHIDCL reviewed the progress of the project fortnightly. In all such meetings dated 20.10.2023, 21.09.2023, 17.08.2023, 13.07.2023, 13.06.2023, 04.05.2023, 06.04.2023, 16.02.2023, 19.01.2023, 15.12.2022, 17.10.2022, 20.09.2022, 14.09.2022, 16.07.2022, 09.07.2022, 16.08.2022, 31.05.2022, 10.03.2022, 02.02.2022, 21.01.2022, 08.12.2021, 04.08.2021, 25.08.2021, 26.10.2021, 08.12.2021, 01.11.2021, 22.06.2021 and EPC Contractor had committed to mobilize the adequate resources in the project and shall achieve the targets of various work activities. However, inadequate mobilization of resources is not a single target could be achieved by EPC Contractor.

14. **WHEREAS**, ED (P) & GM (P) has regularly visited the site to monitoring the progress of the project work issued letter ref. (vii, ix, xvi, xxi, xxxi, xxxv, xxxviii) to increase the progress of the work. However, the progress of work has been dismal, and the contractor has been able to achieve only 21.37 % financial progress as on date. This raises justifiable doubts in the mind of the Authority about the seriousness of the EPC Contractor.

15. The EPC Contractor has not taken advantage of good working season in the region due to poor planning, mobilization of resources, material & manpower at project site. This lackadaisical approach of the EPC Contractor leads to poor progress of the project work. No external factor has substantiated the poor progress of the project work.

16. **WHEREAS**, the EPC Contractor, M/s U.P. State Bridge Corporation Limited has found to be defaulted in fulfilling their obligations per the details given below:-

Sr. No.	Clause No.	Obligation	Time Period (Due date as per CA)	Actual Status on ground
a.	10.1 (i) (c)/ Sch-F	Applicable permits for Stone Crusher, BSM/WMM, RMC plant ,HMP and other applicable permits.	20 days (30.12.2020)	The Stone Crusher and BSM/WMM plant and HMP are yet to be established by the EPC Contractor for the stretch between Km 52+000 to km 72+000.
b.	10.1 (i) (d)	Arrangements for quarrying of materials needed for project highway.	20 days (30.12.2020)	EPC Contractor intimated that they would outsource the materials needed for the project highway. However, no proper documentation submitted by the EPC Contractor till date.
c.	10.2 (i) & 10.2 (iv) (h)	Design & Drawings of the Project Highway	90 days (10.03.2021)	The Design & Drawing of 3.340 Km (3 nos.) out of 4.470 Km (24nos.) of viaducts yet to be submitted by the EPC Contractor to Authority's Engineer for review/approval.
d.	10.3	Construction of the Project Highway	-	The EPC Contractor has started the viaduct work only 03 nos. viaduct out of 24 nos. viaduct which is the critical activity of the project.
e.	11.18	Engagement of staff & labour	-	Inadequate staff & labours engaged at Site. Manpower required as per work programme is 795 nos. and deployed at site is 637 nos. only.

17. **WHEREAS**, PMU-Rhenock has issued multiple Show Cause Notices, Slow Progress Notices, Non-performer Notices, Cure Period Notices to the appointed Contractor in accordance with Contract Agreement as per following details:

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Sl. No.	Package	Notice Details	Details
i.	Package- IIIA	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2021-22/224 Dated: 26.07.2021.	Cure Period Notice
ii.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2021-22/272 Dated: 18.08.2021.	Show Cause for Placing the EPC Contractor in Negative List progress of work.
iii.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2022-23/445 Dated: 29.11.2021.	Show Cause for violation of the clause 4.2 (iv) of the Contract Agreement.
iv.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2022-23/076 Dated: 30.04.2022.	Show Cause for slow progress of work, Delay in submission of designs & drawing, fail to mobilize adequate Manpower & Machineries at project site.
v.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2022-23/419 Dated: 22.09.2022.	Show Cause for slow progress of work, Delay in submission of designs & drawing, fail to mobilize adequate Manpower & Machineries at project site.
vi.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2022-23/540 Dated: 24.11.2022.	Show Cause for Declaring Non-Performer.
vii.		NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg- IIIA/2022-23/541 Dated: 24.11.2022.	Show Cause for Intention to Terminate- Cure period.

18. WHEREAS, the EPC Contractor was found to be in default in following aspects as per MORTH circular dated 06.10.2021:

Sl. No. of MORTH Circular dated 06.10.2021	Description	Description	Action as per MORTH Circular
Sl. No. 1 of Table under Para-2	Fails to set up institutional mechanism and procedure as per contract.	Failed to get approval of D&D, obtain applicable permits, work in accordance with approved work programme, procure and stock adequate construction materials, deploy manpower and machinery as per site requirement etc.	Declaring the Contractor/Concessionaire as non-performer till institutional mechanism and procedure is properly set up as verified by the "Nominated Officer"
Sl. No. 4 of Table under Para-2	Fails to achieve target progress or complete the project as per scheduled agreed at the time of sanctioning of funds under one-time funds infusions (OTFI) or relaxations to contract conditions to improve cash flow solely on account of concessionaire's failure/ default.	Schedule-H relaxation was granted to the EPC Contractor on two occasions i.e., 15.05.2021 & 18.05.2023 so that cash flow is continuous, and pace of progress be increased. However, the EPC Contractor has only achieved physical & financial progress as on 28.11.2023, after lapse of 1063 days, is 28.78% & 24.04% respectively. Further, the EPC Contractor has failed to achieve the extended Milestone-II (30%) due to mismanagement, improper planning,	Declaring the Contractor/concessionaire as non-performer till completion of project or achievement of project target as certified by the "Nominated Officer".

		insufficient Manpower & Machineries as per the work program and failed to get the approval of designs & drawings of the viaduct. This raises justifiable doubts in the mind of the Authority about the seriousness of the contractor in such a critical activity. It has become evidently clear that the EPC Contractor has failed to comply with the conditions set forth in the CA and directions of the Authority regularly and resorted to false assurances as the civil works are yet to be commenced with full swing at Site.	
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19. All the earlier letters/correspondence /notices issued by the Authority to the EPC Contractor for improving its performance may be referred as part and parcel of this order however, the EPC Contractor has not taken any action for improving their performance and also failed to adequate manpower and machineries.

20. **NOW**, it is quite apparent and certain that the EPC Contractor has failed to uphold its contractual obligations as per the Contract Agreement, had caused detrimental effect on the projects under it has failed to perform the duties in an efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

21. **THEREFORE**, in light of the aforesaid facts and circumstances, considering the non-professional attitude of M/s U.P. State Bridge Corporation Limited and aforesaid contractual defaults, breaches, and wilful non-performance in fulfilment of Contractor's obligations as per the provisions of the Contract Agreement and blaming the Authority for its own accountabilities the National Highways & Infrastructure Development Corporation Limited (Authority) is hereby declaring the EPC Contractor M/s U.P. State Bridge Corporation Limited as "Non-Performer" in National Highways and centrally sponsored road projects as per MORTH circular dated 06.10.2021 and in line with the NHIDCL HQ office order dated 05.09.2023 till the completion of the project.

22. In para 8 of MoRT&H Circular no. RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021, *"Upon Declaration of Non-Performer, the Contractor will not be able to participate in any bid with MORT&H or its executing agencies, till such time the Contractor is removed from the list of Non-Performers or the debarment persists. The Contractor shall include its JV partners, promoters whose credentials were considered while qualifying them for the project. Non-Performer/ debarment status of a bidder on the bid-due date will be the criteria for eligibility of a bidder to participate the said bid"*.

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23. This order is issued without prejudice to any other right or remedy available with the Authority under the Contract Agreement and applicable law.

24. This issues with the approval of the Competent Authority.

(M. Riten Kumar Singh)
Executive Director-III
NHIDCL-HQ

Copy for kind information:

- i. The Director General (RD) & SS, MoRT&H.
- ii. The Director General (Border Roads), New Delhi.
- iii. The Chairman, NHAI, Delhi.
- iv. The Chief Secretaries (PWD/Roads) of all State Govt./UT with National Highways and Centrally Sponsored Schemes.
- v. The Chief Engineers (PWD/Roads) of all State Govt./UT with National Highways and Centrally Sponsored Schemes.
- vi. The Director (Tech), NHIDCL, New Delhi.
- vii. All ED (T/P), NHIDCL.
- viii. General Manager (IT), NHIDCL-HQ, New Delhi - with a request to put the notice on the website and give wide publicity.