

एवं अवसंरचना विकास निगम लिमिटेड

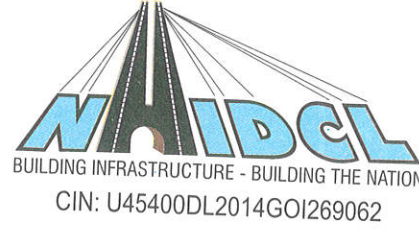
मार्ग मंत्रालय, भारत सरकार
आई बिल्डिंग, 4-संसद मार्ग, नई दिल्ली-110001

NHIDCL Highways & Infrastructure Development Corporation Limited

Ministry of Road Transport & Highways, Govt. of India

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(भारत सरकार का उद्यम)



(A Government of India Enterprise)

NHIDCL/Tripura/NH-08/Gomati-Muhuri/2020/1128

Date: 24.07.2023

(Without Prejudice)

To,

Authorized Signatory,
M/s Brijesh Agrawal, Nirmala Sadan, Vinoba Nagar,
Near Gayatri Mandir, Opposite Hello kids Play School,
Bilaspur-495001.
Email: -erbrijesh123@yahoo.com

[Kind Attention: M/s Brijesh Agarwal]

Sub: Construction of RCC Bridge over river Gomati at Ch 49.800 Km and over River Muhuri at Ch. 93.775 km including approach road to the bridge on Agartala to Sab-room Road section of NH-08 (Old NH-44) in the State of Tripura on EPC basis- **Declaring EPC Contractor as "Non-Performer" -Reg.**

Ref: -

- i. MoRTH Circular w.r.t. Standard Operating Procedure to debar/penalize/declare the Contractor/Concessionaire as Non-Performer in National Highways and other centrally sponsored road projects vide No RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021.
- ii. Contract Agreement dated the 20th August, 2020.
- iii. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2020-21/1426-28 dated 15.03.2022-Notice to intension to declare the EPC Contractor as 'Non performer'.
- iv. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/799-800 dated 19.11.2022 -Slow progress.
- v. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2020-21/917-918 dated 17.12.2022-Notice to intension to declare the EPC Contractor as 'Non performer'-Reminder-I.
- vi. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/1125-26 dated 14.02.2023- Slow progress.
- vii. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/1209-1210 dated 02.03.2023- Notice to intension to declare the EPC Contractor as 'Non performer' as found defaulter under MoRTH Circular dated 06.10.2021
- viii. EPC Contractor letter M/s Brijesh Agarwal letter No. BA/Tripura/22-23/61 dated 17.03.2023-Reply to notice of intension to declare as Non- Performer.
- ix. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/201-202 dated 11.05.2023-Cure notice period.

- x. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/235-36 dated 20.05.2023 **Notice to intension to declare the EPC Contractor as 'Non performer' as found defaulter under MoRTH Circular dated 06.10.2021-Reply.**
- xi. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/266-67 dated 27.05.2023-**Cure notice period.**
- xii. PMU-Udaipur letter No. NHIDCL/PMU-Udp/Gomati-Muhuri/30(1)/2021-22/341-42 dated 15.06.2023-**Slow progress.**

Sir,

Whereas,LOA for the work of "Construction of RCC Bridge over river Gomati at Ch 49.800 Km and over River Muhuri at Ch. 93.775 km including approach road to the bridge on Agartala to Sab-room Road section of NH-08 (Old NH-44) in the state of Tripura on EPC basis" was issued to M/s Brijesh Agarwal (referred as "EPC Contractor" hereinafter) on 13.08.2020 by National Highways Infrastructure Development Corporation Limited(NHIDCL) (referred as "Authority" hereinafter).

2. **Whereas**,the Contract Agreement for executing the subject work was signed on 20.08.2020 for contract price of Rs. 49, 79, 73,861/- between NHIDCLand Contractor.

3. **Whereas**, the Appointed Date for the project was fixed as 23.09.2020 and the EPC Contractor was obliged to complete the project within 18 (eighteen) months from the appointed date i.e, on or before 24.03.2022, keeping in view the fact that time is the essence for the contract.

4. **Whereas**, as per Clause 10.3(i) of EPC Contract Agreement, the EPC Contractor shall construct the Project Highway as specified in Schedule-B and Schedule-C, in conformity with the Specifications and Standards set forth in Schedule-D and shall complete the construction of the Project Highway in accordance with Schedule-J with the Project Completion Schedule of 548 days.

Sr. No.	Description	Appointed date	Duration	Scheduled Milestone date as per CA
1.	Milestone-I (10%)	23.09.2020	191days	01.04.2021
2.	Milestone-II (35%)		329 days	17.08.2021
3.	Milestone-III (70%)		466 days	01.01.2022
4.	Schedule Date of Completion		548 days	24.03.2022

5. **Whereas**, extension of time to complete the project was also granted to EPC Contractor and achievement of Milestone through granted are as follow:

Sr. No.	Description	Appointed date	Scheduled Milestone date as per CA	Milestone as per approved EOT	Remarks
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1.	Milestone-I (10%)	23.09.2020	01.04.2021	Gomati: 30.06.2022 Muhuri: 20.08.2021	Achieved
2.	Milestone-II (35%)		17.08.2021	Gomati: 31.01.2023 Muhuri: 15.05.2023	Gomati: Achieved on 31.01.2023 Muhuri: Achieved on 13.06.2023
3.	Milestone-III (70%)		01.01.2022	Gomati: 20.06.2023 Muhuri: 20.06.2023	Not achieved
4.	Schedule Date of Completion		24.03.2022	Gomati: 28.02.2024 (534 days upto 09.09.2023 without LD and 172 days from 10.09.2023 to 28.02.2024 with LD) Muhuri: 31.10.2023 (214 days upto 24.10.2022 without LD and 372 days from 25.10.2022 to 31.10.2023 with LD)	Yet to be achieved

6 **Whereas**, as per revised approved Milestones by the Competent Authority, the Milestones-I, Milestone-II and Milestones III in respect of Gomati Bridge and Muhuri Bridge respectively were to be achieved on 30.06.2022 & 20.08.2021, 31.01.2023 & 15.05.2023 and 20.06.2023 & 20.06.2023. However, only 36.12% & 34.01% of financial progress in respect of Gomati Bridge and Muhuri Bridge respectively have been achieved as on 31.05.2023. Thus, the EPC Contractor has failed to achieve the Milestone-II for Muhuri Bridge and Milestones-III for both the bridges by the respective extended date of completion and it is also not likely that the works will be completed within the scheduled completion period.

7. **Whereas**, as per the Contract Agreement, the EPC contractor is obligated to complete the construction of the Project as per the time period set forth. However, in complete disregard to the aforesaid stipulation, the EPC Contractor has failed to undertake the construction works at the requisite pace and tempo, inter alia, mainly due to inadequate deployment of machineries, plant & manpower (technical/skilled/unskilled) along with inadequate procurement of construction materials. *Further*, the extremely slow progress of the works at both the bridges viz Gomati & Muhuri is because of poor planning of the EPC Contractor for which the EPC Contractor is solely responsible. The extremely slow progress can be observed from the following table:-

Month	Name of bridge	Cumulative Phy. Prog. (%)	Cumulative Prog. (%)	Fin.
Sep 2020	Gomati & Muhuri	0	0	
Oct 2020	Gomati & Muhuri	0	0	
Nov 2020	Gomati & Muhuri	0	0	



Dec 2020	Gomati & Muhuri	0	0
Jan 2021	Gomati & Muhuri	0	0
Feb 2021	Gomati & Muhuri	0	0
Mar 2021	Gomati & Muhuri	0	0
Apr 2021	Gomati & Muhuri	0	0
May 2021	Gomati & Muhuri	11.50	0
June 2021	Gomati & Muhuri	13.56	0
July 2020	Gomati & Muhuri	14.72	0
Aug 2021	Gomati & Muhuri	15.44	14.37
Sep 2021	Gomati & Muhuri	15.44	14.37
Oct 2021	Gomati & Muhuri	15.44	14.37
Nov 2021	Gomati & Muhuri	15.44	14.37
Dec 2021	Gomati & Muhuri	15.64	14.37
Jan 2022	Gomati & Muhuri	15.64	14.37
Feb 2022	Gomati & Muhuri	16.52	15.18
Mar 2022	Gomati & Muhuri	16.52	15.18
Apr 2022	Gomati & Muhuri	28.59	15.18
May 2022	Gomati & Muhuri	30.90	15.18
June 2022	Gomati & Muhuri	30.90	15.18
July 2022	Gomati & Muhuri	31.15	30.89
Aug 2022	Gomati	31.65	31.60
	Muhuri	30.34	30.33
Sep 2022	Gomati	31.75	31.60
	Muhuri	30.34	30.33
Oct 2022	Gomati	34.48	34.19
	Muhuri	30.35	30.33
Nov 2022	Gomati	34.60	34.19
	Muhuri	33.35	30.33
Dec 2022	Gomati	34.78	34.19
	Muhuri	33.36	30.33
Jan 2023	Gomati	36.09	36.09
	Muhuri	34.62	34.01
Feb 2023	Gomati	36.62	36.12
	Muhuri	34.62	34.01
Mar 2023	Gomati	36.62	36.12
	Muhuri	35.30	34.01
April 2023	Gomati	37.67	36.12
	Muhuri	36.02	34.01
May 2023 (up to 30.05.2023)	Gomati	38.37	36.12
	Muhuri	40.11	34.01

From the above table, it is seen that physical and financial progress in last more than 31 months is only 38.37% & 36.12% in respect of Gomati bridge and 40.11% and 34.01% in



respect of Muhuri bridge. It is very clear that the EPC Contractor has been unable to perform and failed to achieve the desired progress and completion even by the extended date of completion i.e 28.02.2024 in respect of Gomati bridge and 31.10.2023 in respect of Muhuri bridge and thus, attracts the provisions in accordance with MoRTH Circular No RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021 para (2), table (1), & (2) under "Failed to set up Institutional mechanism and procedure as per contract" and has "Failed to complete or has missed any milestone and progress not commensurate with project length/ RoW available."

8. Whereas, pursuant to the CA Clause 4.1 & 4.4 of the Contract Agreement, "The EPC Contractor is obligated to maintain at all times during construction period appropriately and adequately qualified, skilled and experienced staff in their respective functions in conformity with Good Industry Practice. This is all the more important so that works at site are not hampered and smooth execution of works can be ensured." However, the EPC Contractor has failed to deploy adequate machineries/plants, manpower (technical/skilled/unskilled) and construction materials for ensuring non-hampered/timely/smooth/expedited execution of the works and thus, failed to follow Good Industry Practice also, which are inherent in the Contract Agreement and are reflected in extremely slow progress of works at the project site. These defaults/failures/non-fulfilment of obligations of the EPC Contractor have led to the poor planning/poor execution and extremely slow progress (only 38.37% phy. progress & 36.12% financial progress in respect of Gomati bridge and 40.11% phy. progress and 34.01% financial progress in respect of Muhuri bridge) even after the lapse of than 31 months from the Appointed Date. The EPC Contractor has not paid any heed and has failed in every manner to mobilize the required resources and never keeps up to its own commitments to the Authority. This clearly attracts provisions in accordance with MoRTH Circular para (2), table (1), & (2) under "Failed to set up Institutional mechanism and procedure as per contract" and has "Failed to complete or has missed any milestone and progress not commensurate with project length/ RoW available."

9. Whereas, various Cure Notices/letters have been issued by the PMU vide letter cited at references (iv),(vi) ,(ix) ,(xi) and (xii) for inadequate deployment of machineries, plants & manpower (technical/skilled/unskilled), for insufficient procurement of material, and for expediting the works at project site to achieve substantial progress in work. However, in spite of these repeated instructions, the EPC Contractor hasn't complied any of the issued notice letters at ref.(iv) & (vi) and has failed to take any corrective/remedial steps in this regard. The improved results/outcome are still awaited and thus, these defaults/failures/non-fulfilment of obligations of the EPC Contractor clearly attracts provisions in accordance with the MoRTH Circular para (2), table (1) under "Failed to set up Institutional mechanism and procedure as per contract" and table(2) under " Failed to complete of has missed any milestone and progress not commensurate with the contagious project length RoW available."

10. Whereas, it is clear that the project has progressed at a very poor monthly average progress @ 0.92% of physical progress for Gomati bridge and @ 1.04% of physical progress for Muhuri bridge which has been drastically too slow to complete the project in the stipulated time frame including the EOT approved by the Competent Authority and for which the EPC Contractor is solely responsible. The EPC Contractor has failed to achieve



the Milestones-II for Muhuri bridge and Milestones III for both Gomati Bridge and Muhuri Bridge and thus, clearly attracts provisions in accordance with the MoRTH Circular para (2), table (1), & (2) under "Failed to set up Institutional mechanism and procedure as per contract" and has "Failed to complete or has missed any milestone and progress not commensurate with project length/ RoW available."

11. Whereas, the Authority has made all possible efforts and extended all possible assistance to EPC Contractor to expedite the progress of project including extension of time but the EPC Contractor has not shown any improvement or any intention to expedite the pace of works to complete the project within stipulated time frame/approved EOT.

12. Whereas, notice of intention dated 15.03.2022 issued by PMU-Udaipur to EPC Contractor vide letter at ref.(iii) to place the EPC contractor in 'non-Performer' list and allowed a time of 15 days to furnish his reply as per provision of MoRT&H circular RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021. But the Contractor has not given any reply in the stipulated time. Subsequently, PMU-Udaipur vide letter at ref.(v) sent reminder to EPC Contractor. Further, with the approval of ED (P), RO Agartala, a notice of intention dated 02.03.2023 issued by PMU-Udaipur to contractor vide letter at ref.(vii) to place the EPC contractor in 'Non-Performer' list and allowed a time of 15 days to furnish his reply as per the provisions of MoRT&H Circular RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021. The reply of the EPC Contractor vide letter at ref. (viii) has been examined by PMU vide letter at ref (x) and found not to be satisfactory. Further, PMU-Udaipur recommended to notify the EPC Contractor M/s Brijesh Agarwal as "Non-Performer" as per MoRTH Circular dated 06.10.02022.

13. Whereas, now executing the Project with the current speed, it seems that it is not possible for the EPC Contractor, to hand over the project in question due date of target completion.

14. Whereas, notwithstanding with the above likely failure on the part of the Contractor, it seems that Contractor have shown complete disregard for public importance of the project and have also shown total disregard to the strategic utility of the project.

15. Whereas, the EPC Contractor's act seems totally unethical and shows total disregard to the Contract Agreement as well as its commitment made during the Review Meetings, as well as to its own commitment, moreover, the EPC Contractor has also proved that it is not at all bothered about the public discomfort that is being faced by the people of Tripura because of slow execution of the project in question.

16. In view of the above, the EPC Contractor has failed to achieve the Milestone-II for Muhuri Bridge and Milestones III for both Gomati Bridge and Muhuri Bridge and has achieved physical and financial progress of only 38.37% & 36.12% in respect of Gomati bridge and 40.11 % and 34.01% in respect of Muhuri bridge in more than last 31 months mainly due to poor planning and inadequate deployment of machineries, plant & manpower (technical/skilled/unskilled) along with inadequate procurement of construction materials. All the defaults/failures/non-fulfilment of obligations of the EPC Contractor mentioned above clearly attracts provisions of the ibid MoRTH Circular and



thus, the EPC Contractor has caused the breach of the following clauses of MoRTH Circular No RW/NH-33044/76/2021 S&R (P&B) dated 06.10.2021:-

(i) "Failed to set up institutional mechanism and procedure as per contract".

(ii) "Failed to complete or has missed any milestone and progress not commensurate with project length/ RoW available."

17. In view of the aforesaid facts and circumstances, it is clearly evident that the EPC Contractor has failed to uphold its contractual obligations as per the Contract Agreement and has caused detrimental effect on the project under it. In light of the aforesaid facts and circumstances, considering the non-professional attitude of EPC Contractor M/s Brijesh Agarwal, and aforesaid contractual defaults and breaches and wilful non-performance in fulfilment of the Contractor's Obligations as per the provisions of the Contract Agreement, the National Highway & Infrastructure Development Corporation Limited is hereby declaring the EPC Contractor as Non-Performer in National Highways and centrally sponsored road/bridge project as per MoRTH Circular No RW/NH-33044/76/2021 S&R (P&B) dated 06.10.2021.

18. The Authority is declaring the EPC Contractor, M/s Brijesh Agarwal as "Non-Performer" and for a period till the project is completed. Upon declaration of Non-performer, the EPC Contractor as per para 8 of MoRTH circular dated 06.10.2021, will not be able to participate in any bid with MoRTH or its executing agencies, until the EPC Contractor is removed from the list of Non-Performer or debarment persists.

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

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



(Trivendra Kumar)
Executive Director (Tech)
HQ, NHIDCL

Copy to:

- (i) Director General (RD&SS), MORTH
- (ii) Director General (Border Roads), Seema Sadak Bhawan, Ring Road, Narayana, New Delhi
- (iii) Chairman, NHAI
- (iv) Chief Secretaries (PWD Roads) of all State Govt. /UT with National Highways and Centrally Sponsored Schemes.
- (v) PS to MD, NHIDCL/Director(T), NHIDCL/Director(A&F), NHIDCL New Delhi
- (vi) All offices of NHIDCL-HQ/Branch Offices
- (vii) Media relation/ IT Division/ Infracon cell with request to get it posted on NHIDCL Website.

