

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
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(भारत सरकार का उद्यम)

(A Government of India Enterprise)

NHIDCL/Nagaland/ CW/Kohima Bypass Pkg.4/2021-22/ 1582

Dated: 07.03.2023

(Without Prejudice)

To,

The Authorised Signatory,
M/s Pele Khezhie,
Email: pelekhezhie.p4@gmail.com

[Kind Attention: Pele Khezhie]

Sub: Construction of two lane with paved shoulder of Kohima-Bypass Road connecting NH-39 (New NH-02), NH-150(New NH-02), NH-61(New NH-29) and NH-39 (New NH-02) from Design Km 32.000 to design Km 43.454 [Design Length - 11.454 Km] in the state of Nagaland Under SARDP-NE on EPC Mode **-(Package IV):Declaring EPC Contractor as Non-Performer-Reg.**

Ref. Please refer to the following letters: -

- 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 RW/NH-33044/76/2021 S&R (P&B), dated 06.10.2021
- ii. NHIDCL/ PMU-JKM/KB-IV/2022-23/32/1529 dated 22.11.2022 (Show Cause Notice to declare the EPC Contractor as Non-Performer)
- iii. NHIDCL/ PMU-JKM/KB-IV/2022-23/29/1481 dated 10.11.2022 (Notice for Non-achievement of 2nd Milestone and imposition of liquated damages as per Clause 10.3 of CA)
- iv. CEMOSA/Nagaland/KB4/AE/2021/S/0165 dated 09.11.2022 (Authority's Engineer letter regarding submission of RFI)
- v. NHIDCL/ PMU-JKM/KB-IV/2022-23/28/1476 dated 07.11.2022 (Issuance of Cure Notice 08 for non-fulfillment of Obligations)
- vi. NHIDCL/ PMU-JKM/KB-IV/2022-23/27/1430 dated 26.10.2022 (Authority letter regarding actions required to expedite the works)
- vii. NHIDCL/Nagaland/MoM/2022/1381 dated 25.10.2022 (Minutes of review meeting held on 20.10.2022 chaired by MD, NHIDCL)
- viii. NHIDCL/RO-Kohima/Monitoring/Corres/Vol-I/2020-21/3437 dated 20.10.2022 (Minutes of review meeting held on 13.10.2022 chaired by Executive Director (P), RO-Kohima)

- ix. NHIDCL/ PMU-JKM/KB-IV/2022-23/25/1415 dated 18.10.2022 (Issuance of Cure Notice 07 under Clause 23.1.1 of Contract Agreement)
- x. NHIDCL/PMU-JKM/2020-21/Corres/VOL-IV/160/1397 dated 11.10.2022 (Minutes of review meeting held on 10.10.2022 chaired by GM (P), PMU-Jakhama)
- xi. NHIDCL/ PMU-JKM/KB-IV/2022-23/24/1385 dated 08.10.2022 (Issuance of Cure Notice 06)
- xii. NHIDCL/RO-Kohima/Monitoring/Corres/Vol-I/2020-21/3361 dated 06.10.2022 (Minutes of review meeting held on 19.09.2022 chaired by Executive Director (P), RO-Kohima)
- xiii. CEMOSA/Nagaland/KB4/AE/2021/S/160 dated 04.10.2022 (Minutes of review meeting held on 04.10.2022 chaired by Team Leader, Authority's Engineer)
- xiv. NHIDCL/PMU-JKM/KB-IV/VOL-I/2022-23/23/1359 dated 30.09.2022 (Authority letter regarding non deployment of adequate technical manpower)
- xv. CEMOSA/Nagaland/KB4/AE/2021/S/0157 dated 29.09.2022 (Authority's Engineer letter regarding inadequate mobilization of manpower)
- xvi. CEMOSA/Nagaland/KB4/AE/2021/S/0156 dated 29.09.2022 (Authority's Engineer letter regarding slow progress and work program)
- xvii. CEMOSA/Nagaland/KB4/AE/2021/S/0155 dated 26.09.2022 (Authority's Engineer letter regarding submission of RFI)
- xviii. NHIDCL/PMU-JKM/KB-IV & KM/VOL-II/2022-23/22/1317 dated 15.09.2022 (Authority letter regarding submission of 3rd Party test results of construction materials)
- xix. CEMOSA/Nagaland/KB4/AE/2021/S/0153 dated 15.09.2022 (Authority's Engineer letter regarding pending issues from the end of EPC Contractor)
- xx. NHIDCL/PMU-JKM/KB-IV/2022-23/21/1313 dated 13.09.2022 (Authority letter regarding actions required to expedite the works)
- xxi. NHIDCL/PMU-JKM/KB-IV/2022-23/20/1296 dated 09.09.2022 (Issuance of Cure Notice 05)
- xxii. NHIDCL/PMU-JKM/KB-IV/VOL-I/2022-23/19/1295 dated 08.09.2022 (Authority letter regarding submission of pending designs & drawings)
- xxiii. NHIDCL/PMU-JKM/KB-IV/2022-23/17/1251 dated 29.08.2022 (Authority letter regarding actions required on pending issues and to expedite the works)
- xxiv. NHIDCL/PMU-JKM/KB-IV/2022-23/16/1227 dated 18.08.2022 (Authority letter regarding intimation of approval of EOT/project milestones)
- xxv. NHIDCL/PMU-JKM/2020-21/Corres/VOL-III/1191 B dated 08.08.2022 (Minutes of review meeting held on 04.08.2022 chaired by GM (P), PMU-Jakhama)
- xxvi. NHIDCL/PMU-JKM/2020-21/Corres/VOL-III/94/1160 dated 30.07.2022 (Minutes of review meeting held on 21.07.2022 chaired by GM (P), PMU-Jakhama)
- xxvii. NHIDCL/PMU-JKM/KB-IV/2022-23/13/1159 dated 30.07.2022 (Authority letter regarding delay in construction of Minor/Major Bridges)



- xxviii. NHIDCL/PMU-JKM/KB-IV/2022-23/12/1155 dated 30.07.2022 (Authority letter regarding chainage Marking/RoW marking & RoW pillar fixing)
- xxix. NHIDCL/PMU-JKM/KB-IV/2022-23/11/1154 dated 29.07.2022 (Issuance of Cure Notice 04)
- xxx. CEMOSA/Nagaland/KB4/AE/2021/S/148 dated 12.07.2022 (Authority's Engineer letter regarding slow progress)
- xxxi. CEMOSA/Nagaland/KB4/AE/2021/S/144 dated 30.06.2022 (Minutes of review meeting held on 29.06.2022 chaired by Team Leader, Authority's Engineer)
- xxxii. NHIDCL/PMU-JKM/KB-IV/2022-23/04/1045 dated 17.06.2022 (Show cause notice for inadequate mobilization of plants, machineries & manpower)
- xxxiii. NHIDCL/PMU-JKM/2020-21/Corres/VOL-III/71/1043 dated 15.06.2022 (Minutes of review meeting held on 09.06.2022 chaired by GM (P), PMU-Jakhama)
- xxxiv. CEMOSA/Nagaland/KB4/AE/2021/S/141 dated 15.06.2022 (Authority's Engineer letter regarding slow progress of works)
- xxxv. CEMOSA/Nagaland/KB4/AE/2021/S/140 dated 09.06.2022 (Authority's Engineer letter regarding submission of pending drawings)
- xxxvi. CEMOSA/Nagaland/KB4/AE/2021/S/138 dated 02.06.2022 (Authority's Engineer letter regarding observations during site visit of GM (P), PMU-Jakhama)
- xxxvii. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/50 dated 09.11.2021(Authority letter regarding inadequate mobilization of plants, machineries & manpower)
- xxxviii. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/46 dated 07.10.2021 (Authority letter regarding inadequate mobilization of plants, machineries & manpower)
- xxxix. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/44 dated 25.09.2021 (Authority letter regarding Workfront & slow progress of works)
- xl. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/41 dated 11.09.2021 (Issuance of Cure Notice 03)
- xli. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/39 dated 09.09.2021(Authority letter for expediting mobilization of plants, machineries & manpower)
- xl. CEMOSA/Nagaland/KB4/AE/2021/S/081 dated 07.09.2021 (Authority's Engineer letter regarding observations during site visit)
- xl. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/17 dated 24.05.2021 (Issuance of Cure Notice 02 for slow progress of works)
- xliv. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/10 dated 15.04.2021 (Authority letter regarding slow progress of works)
- xl. NHIDCL/PMU-JKM/KB-IV/PK/VOL-I/07 dated 23.03.2021(Issuance of Cure Notice 01 regarding achievement of Milestone-I)
- xlvi. NHIDCL/PMU-PFUTSERO/KB-IV/PK/VOL-I/03 dated 12.11.2020 (Authority letter regarding cure notice period for fulfilling obligations)
- xl. NHIDCL/RO-KOHIMA/Corres/KB-IV/Vol-I/2020-21/229/462dated 29.09.2020 (RO-Kohima letter regarding declaration of Appointed Date)
- xl. Contract Agreement dated 05.09.2020



Sir,

NHIDCL (National Highways & Infrastructure Development Construction Limited) and M/s Pele Khezhe (Hereinafter referred to as "the EPC Contractor") signed an EPC Agreement on the 5th September, 2020 for the work of "Construction of two lane with paved shoulder of Kohima-Bypass Road connecting NH-39 (New NH-02), NH-150(New NH-02), NH-61(New NH-29) and NH-39 (New NH-02) from Design Km 32.000 to design Km 43.454 [Design Length - 11.454 Km] in the State of Nagaland Under SARDP-NE on EPC Mode" at the Contract Price of Rs. 118,56,00,000/- (Rupees One Hundred Eighteen Crore Fifty Six Lakhs Only) excluding GST, with construction period of 18 (eighteen) months commencing from the Appointed Date i.e. the 15th October, 2020.

2. **Whereas**, as per Clause 10.3 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 549 Days. Further, EOT has been granted for the subject Road Project mainly due to delay in providing RoW and Schedule-J/Milestones have been amended as under: -

Sl. No.	Description	Duration	Schedule Milestone date as per CA	Revised approved Milestone Date	% of Completion	Remark
1	Milestone-I	192 Days	25 th Apr, 2021	13 th Mar, 2022	10%	Achieved
2	Milestone-II	137 Days	9 th Sep, 2021	10 th Nov, 2022	35%	Not Achieved
Sl. No.	Description	Duration	Schedule Milestone date as per CA	Revised approved Milestone Date	% of Completion	Remark
3	Milestone-III	138 Days	25 th Jan, 2022	10 th Feb, 2023	70%	Not Achieved and only 13.00% of financial progress as on 31.01.2023
4	Milestone-IV	82 Days	17 th Apr, 2022	14 th Apr, 2023	100%	-

3. **Whereas**, as per revised approved Milestones, Milestone-II and Milestone-III were to be achieved on 10.11.2022 and 10.02.2023 respectively. *However*, only 13.00% of financial progress has been achieved as on 31.01.2023. Thus, the EPC Contractor has failed to achieve Milestone-II & Milestone-III and it is also not likely that the works will be completed within the scheduled Completion Period.



4. *Whereas*, as per the Contract Agreement the EPC Contractor is obliged to complete the construction of the Project Highway as per 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 & tempo, inter alia, mainly due to inadequate deployment of machineries, plants & manpower (technical/skilled/unskilled) along with insufficient procurement of construction materials. *Further*, the extremely slow progress of the works at subject road project 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	Monthly Physical Progress (%)	Cumulative Physical Progress (%)	Monthly Financial Progress (%)	Cumulative Financial Progress (%)
Nov-20	0.00	0.00	0.00	0.00
Dec-20	0.00	0.00	0.00	0.00
Jan-21	0.00	0.00	0.00	0.00
Feb-21	0.00	0.00	0.00	0.00
Mar-21	2.32	2.32	0.00	0.00
Apr-21	0.42	2.74	0.00	0.00
May-21	0.00	2.74	0.00	0.00
Jun-21	0.00	2.74	0.00	0.00
Jul-21	0.76	3.50	0.00	0.00
Aug-21	0.04	3.54	3.29	3.29
Sep-21	0.00	3.54	0.00	3.29
Oct-21	0.30	3.84	0.00	3.29
Month	Monthly Physical Progress (%)	Cumulative Physical Progress (%)	Monthly Financial Progress (%)	Cumulative Financial Progress (%)
Nov-21	1.86	5.70	0.00	3.29
Dec-21	0.00	5.70	2.31	5.60
Jan-22	0.00	5.70	0.00	5.60
Feb-22	0.17	5.87	0.00	5.60
Mar-22	7.27	13.14	7.40	13.00
April-22	0.00	13.14	0.00	13.00
May-22	0.00	13.14	0.00	13.00
June-22	0.00	13.14	0.00	13.00
July-22	0.00	13.14	0.00	13.00
Aug-22	0.15	13.29	0.00	13.00
Sep-22	0.38	13.67	0.00	13.00
Oct-22	0.16	13.83	0.00	13.00
Nov-22	0.00	13.83	0.00	13.00
Dec-22	0.00	13.83	0.00	13.00
Jan-23	0.10	13.93	0.00	13.00

From the above table, it is seen that physical and financial progress in last more than 27 months is only 13.93% and 13.00% respectively. It is very clear that the EPC Contractor is unable to perform and unlikely to achieve the desired progress and completion, even on the extended/revised completion date of 14.04.2023 and thus, clearly attracts the provisions in accordance with the MoRTH Circular No. RW/NH-33044/76/2021 S&R (P&B) dated



06.10.2021 para (2), table (1), Sl. (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."

5. *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 project 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, has 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-fulfillment of the obligations of the EPC Contractor have led to the poor planning/poor execution and extremely slow progress (Only 13.00% of financial progress & 13.93% of physical progress as on 31.01.2023 even after lapse of more than 27 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 the ibid MoRTH Circular para (2), table (1), Sl. (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."

6. *Whereas*, various Cure Notices/letters have been issued by the Authority and the Authority Engineer vide the letters cited at references (v),(vi), (ix), (xi), (xiv), (xv), (xvi), (xix), (xx), (xxi), (xxii), (xxiii), (xxix), (xxx), (xxxii), (xxxiv), (xxxvi), (xxxvii), (xxxviii), (xxxix), (xl), (xli), (xlii), (xliii), (xliv)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*, inspite of these repeated instructions, the EPC Contractor hasn't complied with any of the issued notices and has failed to take any corrective/remedial steps in this regard. The improved results/outcomes are still awaited and thus, these defaults/failures/non-fulfillment of the obligations of the EPC Contractor clearly attract provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) under "Failed to set up institutional mechanism and procedure as per Contract."

7. *Whereas*, various Cure Notices/letters have been issued by the Authority and the Authority's Engineer for commencement of construction of Minor & Major Bridges vide letters cited at references (v), (ix), (xi), (xxi), (xxvii). *However*, the EPC Contractor has failed to commence the construction works of Minor/Major Bridges and thus, clearly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) and Sl. (6) under "Failed to set up institutional mechanism and procedure as per Contract" and "Failed to start the work."



8. *Whereas*, the Authority & Authority's Engineer have issued Cure Notices/letters for RoW marking/chainage marking and for fixing of RoW pillars vide letters cited at references (vi), (ix), (xi), (xx), (xxiii), (xxviii). *However*, the EPC Contractor has failed to mark RoW boundaries/ chainage and has also failed to fix RoW pillars at entire stretch and thus, clearly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) and Sl. (6) under "Failed to set up institutional mechanism and procedure as per Contract" and "Failed to start the work."

9. *Whereas*, the EPC Contractor has failed to submit requisite documents/credentials and necessary designs & drawings to the Authority's Engineer and also has failed to obtain approval till date *inter-alia* design & drawing of 40 nos. of culverts, 01 no. of Minor Bridge and 01 no. of Major Bridge, design & drawing of Drains to be constructed at the subject project, drawing/credential of Geo-grid to be used in pavement of the road, Plan & Profile from Km 41+730 to Km 43+454, mix design of DBM & BC and drawings of Junctions. Hence, the EPC Contractor has again failed to follow its obligations stipulated under the EPC Contract Agreement and clearly attracts provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) under "Failed to set up institutional mechanism and procedure as per Contract.".

10. *Whereas*, the EPC Contractor has failed to start WMM, DBM and BC works even after monsoon period is over and weather is conducive to execute all types of works even after persuasion by the Authority and Authority's Engineer vide the letters cited at references (v), (vi), (xx), (xxiii). This clearly attracts the provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1), (2) & Sl. (6) under "Failed to set up institutional mechanism and procedure as per Contract," "Failed to complete or has missed any milestone and progress not commensurate with project length/ ROW available" and "Failed to start the work."

11. *Whereas*, the EPC Contractor has given assurances to expedite the works & to deploy adequate plants, machineries & manpower (technical & Unskilled labour force) in each reply/submission. *However*, the works are yet to be expedited and adequate plants, machineries & manpower (technical/skilled/unskilled) are yet to be deployed. All of these defaults show his failure to perform the works as per the Contract provisions and thus, also showing lack of intention of the EPC Contractor towards the works.

(a) The EPC Contractor has assured to fulfil all the obligations and to rectify all the defaults in the review meeting held on 13.10.2022, under the chairmanship of ED (P), RO-Kohima (Copy of Meeting Minutes enclosed). *However*, any improvement isn't shown by the EPC Contractor and presently, very few/less works are being executed at the project site.

(b) The Authority has even issued a Cure Notice under Clause 23.1.1 of Contract Agreement (Termination) vide letter cited at ref. (ix) and has also directed the EPC Contractor to strictly meet all the obligations in accordance with the Contract Agreement in a sincere, systematic and time bound manner within 60 (sixty) Days from the issuance of Notice. *However*, the EPC Contractor hasn't shown any sign of improvement at the project site till date, i.e., even after lapse of more than four months.



(c) These failures of the EPC Contractor clearly attract provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (1) under "Failed to set up institutional mechanism and procedure as per Contract."

12. *Whereas*, it is clear that the project is progressing at a very poor monthly average of approx 0.48%, which is too slow to complete the project in the stipulated time frame and for which the EPC contractor is solely responsible. The Contractor has neither submitted a realistic resource-based work program in accordance with Clause 10.1(iii) of Contract Agreement w.r.t. resources available at site, S-Curve, cash flow chart etc. to complete the balance work nor any meticulous planning, for procurement of construction materials, and other ancillary items in order to complete the project in the specified period of time. The EPC Contractor has failed to achieve Milestone-II & Milestone-III and thus, these defaults/failures clearly attract provisions in accordance with the ibid MoRTH Circular para (2), table (1), Sl. (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."

13. *Whereas*, the EPC Contractor has been frequently instructed to expedite the works at the project site but inspite of these instructions, the EPC Contractor has failed to perform in almost all aspects of the provisions of Contract Agreement. The defaults/failures/non-fulfilment of the obligations of the EPC Contractor towards this extremely slow progress of the works and non-achievement of Milestone-II and Milestone-III, are as under: -

- (a) Insufficient/inadequate deployment of manpower (Skilled/unskilled).
- (b) Shortage of reliable and qualified technical staff.
- (c) Insufficient/inadequate deployment of plants and machineries.
- (d) Non-installation/non-functioning of critical equipment/plants such as Hot Mix plant, WMM plant, Stone Crusher & Batch Mix plant.
- (e) Most of the machineries deployed on the site being idle.
- (f) Execution of works at a very few locations at a time with insufficient number of skilled/unskilled labour force.
- (g) Lack of meticulous planning.
- (h) Pending submission of Compliance/Design & Drawings/Credentials to the Authority's Engineer.
- (i) Pending submission of Plan & Profile from Km 41+730 to Km 43+454.
- (j) Pending submission of Mix Design of DBM & BC.
- (k) Pending RoW marking/RoW pillar fixing/Chainage Marking at entire stretch.
- (l) Pending submission of Quarterly Drone Video Recordings.
- (m) Pending third Party testing of Construction Materials.
- (n) Non-started construction works of Minor Bridge & Major Bridge.
- (o) Non-started WMM/DBM/BC works.
- (p) Non-started Drain works.
- (q) Non-availability of adequate construction materials.

All these failures clearly attract the provisions in accordance with the ibid MoRTH circular para (2), table (1), Sl. (1), (2) & (6) under "Failed to set up institutional mechanism and procedure as per Contract," "Failed to complete or has missed any milestone and progress not commensurate with project length/ ROW available" and "Failed to start the work."



14. *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 hasn't shown any improvement or any intention to execute the works and to complete the project within stipulated time frame as per the Contract Agreement. The EPC Contractor has failed still to proceed with the works and has executed inconsistent and irregular works and there is no sign of improvement in terms of mobilization of fund, men, materials and machineries to expedite the progress of work on Project site. The state of item wise completed and balance works against total scope is as under and very minimal work has been executed during last more than 27 months: -

Sl. No.	Item of Works	Unit/Nos	Total Scope	Completed	Balance Work as on 31 st Jan 2023
1	Earthwork/Formation Cutting	Km	11.454	7.300	4.154
2	Subgrade	Km	11.454	5.986	5.468
3	GSB	KM	11.454	2.862	8.592
4	WMM	Km	11.454	-	11.454
5	DBM	Km	11.454	-	11.454
6	BC	Km	11.454	-	11.454
Sl. No.	Item of Works	Unit/Nos	Total Scope	Completed	Balance Work as on 31 st Jan 2023
7	Culverts (New + Reconstructions)	Nos	67	07 (05 nos. completed and 02 nos. under progress)	60
8	Major Bridges	Nos	1	-	1
9	Minor Bridges	Nos	1	-	1
10	Lined Drain	Km	11.206	-	11.206
11	Retaining Walls (All types)	RM	100	20	80
12	Breast Walls (All types)	RM	2,890	103	2,787
13	Seeding & Mulching (with Polymer Net)	SM	21,020	-	21,020

15. In view of the above, the EPC Contractor has failed to achieve Milestone-II & Milestone-III and has achieved physical progress and financial progress of only 13.93% and 13.00% respectively in more than last two years and as on 31.01.2023, mainly due to poor planning and inadequate deployment of machineries, plants & manpower (technical/skilled/unskilled) & insufficient procurement of construction materials. All the failures/defaults/non-fulfillment of the obligations of the EPC Contractor mentioned above, clearly attract the provisions of 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."*

(iii) *"Failed to Start Work."*

16. Whereas, Authority vide letter cited at ref. (ii) has issued Show Cause Notice to declare the EPC Contractor as Non-Performer due to slow progress of work and poor planning of work in accordance to the Ministry's Circular dated 22.11.2022 and 15 days' time was given to the EPC Contractor for furnishing his reply before declaring as Non-Performer. However, even after lapse of more than 15(fifteen) days, the EPC Contractor has failed to furnish any reply against the said notice.

17. However, in view of the aforesaid facts and circumstances, it is clearly evident that the EPC Contractor has failed to uphold his 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 M/s Pele Khezhe, and aforesaid contractual defaults and breaches and wilful non-performance in fulfillment of the Contractor's obligations as per the provisions of the Contract Agreement, the National Highways & Infrastructure Development Corporation Limited is hereby declaring the EPC Contractor as Non-Performer in National Highways and centrally sponsored road project as per MoRT&H 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 Pele Khezhe as Non-Performer and for a period of 6 months or till the achievement of the Milestone (Milestone-II - 35%) whichever is later, as per para-8 of MoRT&H Circular dated 06.10.2021. Upon declaration of Non-Performer, the EPC Contractor will not be able to participate in any bid with MoRT&H or its executing agencies, until the EPC Contractor is removed from the list of Non-Performer or debarment persists.

19. This 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 (T)
HQ, NHIDCL