

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/HQ-NH717B/Pkg-IIC/2335

Dated: 16.04.2024

WITHOUT PREJUDICE

To,

M/s. Nalanda Engicon Private Limited
M/s. Ujjain Engicon Private Limited (JV),
14, Sri Ram Tower, West of Jalan Shop,
Main Road, Kankarbagh
Patna - 800020

[Kind Attention: Shri Bibeka Nand Kumar, Authorized Signatory]

Sub: "Construction and Upgradation of Existing Road to 2-lane with Paved Shoulder from Km 37+600 (New Rolep Bridge) to Km 52+000 (Chochenpheri) of Rhenock-Menla Spur (NH-717B) Package-IIC on EPC Basis under SARDP-NE phase 'A' in the state of Sikkim"- Declaring the EPC Contractor M/s Nalanda Engicon Private Limited & M/s Ujjain Engicon Private Limited (JV) as 'Non-Performer'- Reg.

Ref:

- i. AE letter no AE/Rhenock-Menla/NH-717B/PKG-IIC/279 dated 03.02.2024 - "Review of Design & Drawing for viaduct - reg."
- ii. AE letter no AE/Rhenock-Menla/NH-717B/EPC-CONT/192 dated 20.01.2024 - "Relocation & variation of Length in Viaduct - reg."
- iii. AE letter no AE/Rhenock-Menla/NH-717B/EPC-CONT/193 dated 20.01.2024 - "Removal of formwork and staging in culvert/Box cell/MNB - reg."
- iv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/NH-717B/2023-24/523 Dated: 18.01.2024 - "Minutes of Project Review Meeting dated 02.01.2024 - reg"
- v. AE letter no AE/Rhenock-Menla/NH-717B/EPC-CONT/186 dated 15.01.2024- "Observation on Submitted Plan & Profile from Km 37+600 to km 52+000 - reg."
- vi. RO Gangtok letter no NHIDCL/RO-Gangtok/Rhenock-Menla/Pkg-IIC/2024/983 dated 12.01.2024 - "Minutes of Meeting held on 05.01.2024 - reg."
- vii. Your letter no NEPL/NH-717B/PKG-IIC/2023-24/119 dated 04.01.2023 - "Reply to Notice for intention to declare the EPC Contractor as Non-Performer - reg."

Signature

- viii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour note/2023-24/500 Dated: 03.01.2024 - **"Tour Note ED (P) for expedite the progress - reg."**
- ix. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/479 Dated: 23.12.2023 - **"Personal hearing - reg."**
- x. AE letter no AE/Rhenock-Menla/NH-717B/PKG-IIC/269 dated 23.12.2023 - **"Completion of Protection works in critical locations and Traffic Regulation - reg."**
- xi. AE letter no AE/Rhenock-Menla/NH-717B/PKG-IIC/270 dated 23.12.2023 - **"Submission of Design & Drawing of Balance Viaducts - reg."**
- xii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/475 Dated: 20.12.2023 - **"Notice for intention to declare the EPC Contractor as Non-Performer - reg."**
- xiii. AE letter no AE/Rhenock-Menla/NH-717B/EPC-CONT/186 dated 11.12.2023 - **"BSM Target to be achieved on or before 31st March 2024 - reg."**
- xiv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/ Dated: 09.12.2023 - **"Slow Progress of Restoration Work at Km 44+700 - reg."**
- xv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/454 Dated: 09.12.2023 - **"Slow Progress of Restoration work at km 44+700 - reg."**
- xvi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/458 Dated: 09.12.2023 - **"BSM Target to be achieved on or before 31st March 2024 - reg."**
- xvii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/265 dated 02.12.2023 - **"Reminder-II Slow Progress of Restoration Works at Ch. 44+700 - reg."**
- xviii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/262 dated 16.11.2023 - **"Mobilization plan to complete the project within schedule completion date and reminder to achieve Milestone-II - reg."**
- xix. AE letter no. AE/Rhenock-Menla/NH-717B/EPC-Cont/178 dated 01.11.2023 - **"Reminder-I submission of Three Month Rolling work Programme and strip chart based Work Programme - reg."**
- xx. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/257 dated 20.10.2023- **"Failure of fulfilment of Contract Agreement - reg."**
- xxi. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/255 dated 16.10.2023 - **"Reminder-III given for submitting the design and drawing of balance viaducts & MNB - reg."**

xxii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/256 dated 17.10.2023 - "Slow progress of restoration work at Km 44+700 - reg."

xxiii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/350 Dated: 16.10.2023 - "Tour Note of ED (P) for expedite the project progress - reg."

xxiv. AE letter no. AE/Rhenock-Menla/NH-717B/EPC-CONT/174 dated 05.10.2023 - "Submission of quarterly videography of the project as per clause 11.13 of Contract Agreement - reg."

xxv. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/253 dated 05.10.2023 - "Notice for payment withheld from upcoming all SPS for Non-Maintenance of existing road during construction period as per article 10 clause 10.4 (i) & 10.4 (ii) - reg."

xxvi. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/252 dated 04.10.2023 - "Floor protection work towards downstream at MNB-1 at KM 44+435 - reg."

xxvii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/249 dated 18.09.2023 - "Reminder-II given for submitting the design and drawing of balance viaducts & MNB - reg."

xxviii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/306 Dated: 18.09.2023 - "Meeting at RO-Gangtok - reg."

xxix. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/246 dated 14.09.2023 - "Reminder given for submitting the design and drawing of balance viaducts & MNB - reg."

xxx. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/site instruction dated 11.09.2023 - "Site instruction - reg."

xxxi. 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."

xxxii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/273 Dated: 26.08.2023 - "Slow progress of work due to shortage of Manpower & Machinery at site - reg."

xxxiii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/263 Dated: 24.08.2023 - "Tour Note of ED (P) for expedite the project progress"

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xxxiv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/084 Dated: 01.08.2023 - "Road Collapse from Km 44+630 to Km 44+760 - reg."

xxxv. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/225 dated 06.07.2023 - "Maintenance of Existing Road and Drain - reg."

xxxvi. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/183 Dated: 27.06.2023 - "Approval of EOT for shifting Milestone-II(30%), III(70%) & IV(100%) by 253 days - reg."

xxxvii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/212 dated 05.06.2023 - "Assurance given by the EPC Contractor about the completion of Construction of different viaducts - reg."

xxxviii. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Review Meeting/2023-24/084 Dated: 18.05.2023 - "Expedite the project progress - reg."

xxxix. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Tour Note/2023-24/066 Dated: 10.05.2023 - "Tour Note of ED (P) for expedite the project progress"

xl. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/200 dated 26.04.2023 - "Re-exercise of concrete mix - reg."

xli. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/199 dated 21.04.2023 - "Unjustified work of viaduct at Km 48+520 - reg."

xlvi. AE email dated 20.04.2023 - "Issued Non-Conformance Report (NCR) on culvert at Km 38+480 - reg."

xlvi. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/195 dated 15.04.2023 - "Regarding execution of viaduct work without approval of Design & Drawing at Km 41+280 - reg."

xlv. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/190 dated 03.04.2023 - "Repeated submission of Plan & Profile, Design & Drawing of viaduct - reg."

xlv. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/AE/2022-23/798 Dated: 15.03.2023 - "Tour Note of D (T) for expedite the project progress - reg."

xlvi. This office letter no NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/202-23/771 Dated: 04.03.2023 - "Regarding use of hand packed wall on the edge of RoW - reg."

xlvii. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/171 dated 24.02.2023 - "Project Progress and Project Milestone-II - reg."

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xlvi. PMU-Rhenock no NEPL/NH-717B/PKG-IIC/2023-23/233 dated:18.02.2023 - **“Reply of show cause notice for declaring the EPC Contractor as non-performer - reg.”**

xlix. AE letter no. AE/Rhenock-Menla/NH-717B/PKG-IIC/165 dated 17.02.2023 - **“Expedite the work plan for the achievement of milestone-II - reg.”**

l. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/202-23/715 Dated: 03.02.2023 - **“Notice for declaring the EPC Contractor as non-performer - reg.”**

li. PMU-Rhenock letter no. NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/202-23/533 Dated: 18.11.2022 - **“Relaxation in schedule-H - reg.”**

lii. Ministry letter no. standard operating procedure to debar/penalize/declare the EPC 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.

liii. PMU-Rhenock letter no NHIDCL/SIKKIM/NH-717B/Pkg-IIC/2020/2ndcall/789 Dated: 16.03.2021- **“Letter of award - reg.”**

liv. PMU-Rhenock letter no NHIDCL/PMU-Rhenock/Rhenock-Menla/PKG-IIC/2021-22/085 dated 21.05.2021- **“Appointed Date - reg.”**

Sir,

NHIDCL (National Highways Infrastructure & Development Corporation Limited) (*hereinafter referred to as “Authority”*) and M/s. Nalanda Engicon Private Limited & M/s. Ujjain Engicon India Private Limited (JV) (*hereinafter referred to as “the EPC Contractor”*) signed an EPC Agreement on the 23rd April 2021 for *“Construction and Upgradation of Existing Road to 2-lane with Paved Shoulder from Km 37+600 (New Rolep Bridge) to Km 52+000 (Chochenpheri) of Rhenock-Menla Spur (NH-717B) Package-IIC on EPC Basis under SARDP-NE phase ‘A’ in the state of Sikkim”*(*hereinafter referred to as project work*) with construction period of 36(Thirty Six) Months commencing from the Appointed date. The Appointed date for the project was declared as 25th May 2021.

2. **WHEREAS**, as per clause 4.1 (i) of the Contract Agreement, the Contractor is obliged to undertake Survey, Investigation, Design, Engineering, Procurement, Construction, and maintenance of the Project Highway and observe, fulfil, and comply with and perform its obligations set out under the Contract Agreement and moreover follow the Contract Agreement and the obligations thereon with full adherence, diligence, and sincerity. However, Contractor has shown non-professional attitude towards the project works and found to be careless/negligent about the finalization of Design & Drawings of structures, maintaining adequate material and manpower, mobilizing plant & machineries, maintenance of the existing project highway. Such lapses on the part of EPC Contractor have adverse impact of the projects progress.

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3. WHEREAS, as per the Clause 10.3.(i) & (ii) 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. Due dates for achievement of the Project Milestones and Scheduled Completion of the project as prescribed in Schedule-J of the Contract Agreement are as under:

Sr. No.	Project Milestone as per Schedule-J of CA	Days (From the appointed date i.e., 25.05.2021)	Schedule date	As per EOT-I	Financial Progress on dated 06.03.2024
i.	Project Milestone-I (5% of the Contract Price)	382 Days	10.06.2022	-	32.19%
ii.	Project Milestone-II (30% of the Contract Price)	657 days	12.03.2023	20.11.2023	
iii.	Project Milestone-III (70% of the Contract Price)	930 days	10.12.2023	19.08.2024	
iv.	Scheduled Completion (100% of the Contract Price)	1095 days	23.05.2024	31.01.2025	

4. WHEREAS, the progress of work has been dismal since start of the project and the EPC Contractor has been able to achieve Physical Progress of 32.19% only as on 06.03.2024, against desired progress of 41.41% as per their own revised work programme. Further, it is to mention that the EPC Contractor had already been provided the required hindrance free land in May 2021 (Appointed Date) to execute the work. In spite of it and several notices issued by Authority's Engineer and Authority, the progress could not be achieved by the Contractor due to lack of resources and improper planning. The land required for executing balance work was 10.02 km which was made available to the Contractor since Appointed Date.

5. 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 08 nos. viaducts out of 13 nos. viaducts work as on date, thereby impacted the progress of the works very badly.

6. WHEREAS, Design & Drawing of Km 0.867 (3 nos.) out of 1.470 Km (13 nos.) of viaducts are still pending with the EPC Contractor. It has become evidently clear that the Contractor has failed to comply with the directions of Authority regularly and has resorted to only giving false assurances. The EPC Contractor was provided 10.02 km of hindrance free land at the time of Appointed Date, wherein, 10 nos. of viaducts were to be

constructed. However, the design and drawing of 06 nos. viaducts were submitted by the EPC Contractor between June and August 2023, and further 05 nos. viaducts were submitted from September 2023 to January 2024, total 11 nos. viaduct's design & drawings have been submitted by the EPC Contractor as on date. In this regard, the Authority & Authority's Engineer have given several reminders to the EPC Contractor for submission of the balance design & drawing vide letters under at ref.(i), (ii), (v), (viii), (xi), (xxi), (xxiii), (xxvii), (xxix), (xxxiii), (xxxix), (xliv) & (xlv). This shows that the EPC contractor has miserably failed to even submit the required design and drawing within 90 days of providing hindrance free land as per the clause 10.2(iv) (h) of CA.

7. **WHEREAS**, the EPC Contractor even failed to achieve progress as per its own work programme submitted from time to time. The status of the physical & financial progress is tabulated below from the appointed date till 06.03.2024:

Month	As Achieved actually		Target progress as per approved revised work programme		Difference (B-D)
	Physical Progress	Financial Progress	Physical Progress	Financial Progress	
	(A)	(B)	(C)	(D)	
From 25.05.2021 to 06.03.2024	0.00%	0.00%	0.21%	0.21%	-0.21%
Jul-21	0.00%	0.00%	0.42%	0.42%	-0.42%
Aug-21	0.00%	0.00%	0.63%	0.63%	-0.63%
Sep-21	0.00%	0.00%	0.85%	0.85%	-0.85%
Oct -21	0.00%	0.00%	1.23%	1.23%	-1.23%
Nov-21	0.00%	0.00%	1.58%	1.58%	-1.58%
Dec-21	0.00%	0.00%	1.96%	1.96%	-1.96%
Jan-22	3.16%	0.00%	2.55%	2.55%	-2.55%
Feb-22	4.35%	0.00%	3.14%	3.14%	-3.14%
Mar-22	5.28%	2.56%	3.74%	3.74%	-1.18%
Apr-22	5.60%	2.56%	4.15%	4.15%	-1.59%
May-22	5.62%	3.89%	4.59%	4.59%	-0.70%
Jun-22	6.44%	5.19%	5.00%	5.00%	0.19%
Jul-22	6.74%	5.19%	5.59%	5.59%	-0.40%
Aug-22	6.93%	5.19%	6.34%	6.34%	-1.15%
Sep-22	7.19%	5.19%	7.26%	7.26%	-2.07%
Oct-22	8.06%	5.19%	10.00%	10.00%	-4.81%
Nov-22	8.78%	6.59%	13.23%	13.23%	-6.64%
Dec-22	10.37%	9.06%	16.75%	16.75%	-7.69%
Jan-23	12.54%	10.88%	20.93%	20.93%	-10.05%
Feb-23	15.45%	13.85%	25.17%	25.17%	-11.32%
Mar-23	20.64%	20.13%	17.59%	17.59%	2.54%
Apr-23	22.51%	20.13%	21.71%	21.71%	-1.58%

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May-23	25.64%	22.36%	23.12%	23.12%	-0.76%
Jun-23	25.64%	24.37%	23.86%	23.86%	0.51%
Jul-23	25.99%	24.37%	24.62%	24.62%	-0.25%
Aug-23	25.99%	24.37%	25.36%	25.36%	-0.99%
Sep-23	26.14%	24.37%	25.97%	25.97%	-1.60%
Oct-23	27.39%	24.37%	26.29%	26.29%	-1.92%
Nov-23	29.32%	25.80%	30.00%	30.00%	-4.20%
Dec-23	30.85%	30.07%	31.92%	31.92%	-1.85%
Jan-24	32.19%	30.07%	35.78%	35.78%	-5.71%
29th Feb-2024	32.19%	31.43%	41.41% (Upto 29.02.2024)	41.41% (Upto 29.02.2024)	-9.98%

8. WHEREAS, the physical progress is found to be 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 (BSM)	Achieved Progress (BC)
Oct - 2021	0.000	0.000
Nov-21	0.000	0.000
Dec-21	0.000	0.000
Jan-22	0.000	0.000
Feb-22	0.000	0.000
Mar-22	0.000	0.000
Apr-22	0.000	0.000
May-22	0.000	0.000
Jun-22	0.000	0.000
Jul-22	0.000	0.000
Aug-22	0.000	0.000
Sep-22	0.000	0.000
Oct-22	0.000	0.000
Nov-22	0.000	0.000
Dec-22	0.000	0.000
Jan-23	0.000	0.000
Feb-23	0.000	0.000
Mar-23	0.700	0.000
Apr-23	0.000	0.000
May-23	0.800	0.000
Jun-23	0.000	0.000
Jul-23	0.000	0.000
Aug-23	0.000	0.000
Sep-23	0.000	0.000
Oct-23	0.000	0.000

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Nov-23	0.210	0.000
Dec-23	0.645	0.000
Jan-24	0.220	0.000
24th Feb-24	0.655	0.000
Total (KM)	3.230	0.000

9. WHEREAS, Clause 10.2 (iv) (h) of Article 10 of the Contract Agreement says that, "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." However, the EPC Contractor has failed to ensure the approval of design & drawings within specified time and to say the least even failed to submit the designs & drawings timely. The detailed status of design & drawing as on date is tabulated below:-

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
i.	Plan & Profile	Km 37.600 to Km 52.000	25.05.2021 (69.72%)	Initial submission was made by the EPC Contractor on 15.11.2021 & 05.02.2023. The same was reviewed/approved by the Authority Engineer on 22.12.2021 & 22.02.2023.	915 days
		Only 1.1814 Km was available due to building hindrance on project site. only 20 m hindrance is available on the project site. Hence, 99.86% hindrance free land has provided to the EPC Contractor as on date.	07.12.2021 (91.80%) and 08.11.2023 (99.86%)	However, the EPC Contractor vide letter dated 18.12.2023 has submitted revised Plan & Profile for review/approval of AE. AE vide letter dated 15.01.2024 has raised several observations. Compliance of the same is yet to be submitted by the EPC Contractor even after lapse of more than a month's time.	108 days

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ii.	Viaduct	Km 37.600 to Km 52.000	25.05.2021 (69.72%)	Total 10 nos viaduct falls in 10.02 Km (69.72%) land as per Schedule-B of CA. which has already provided to the EPC Contractor as on 25.05.2021 (Appointed Date). However, the EPC Contractor has failed to submit the design & drawing within the stipulated time.	915 days
		Km 37.600 to Km 52.000	07.12.2021 (91.80%) and 08.11.2023 (99.86%)	Design & Drawing of Km 0.867 (03 nos.) out of 1.470 Km (13 nos) of viaducts are still pending with the Contractor.	108 days

10. **WHEREAS**, as per Clause 10.4 (i) of the Contract Agreement, wherein it is stipulated that, during the Construction Period, the Contractor shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition on Appointed Date, and shall undertake the necessary repair and maintenance works for this purpose. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the Project Highway. However, the EPC Contractor has not fulfilled its obligations stipulated in aforesaid clause and due to poor maintenance of existing roads, many vehicles broke down and cause loss to public property leading to loss of reputation to NHDICL in the region.

Further, the existing lane(s) of the project highway is getting worse due to non-maintenance of the highway. The contractor is being repeatedly directed to maintain the road as it is causing inconvenience to the road users and NHIDCL is facing adverse criticism for the same. In addition, the existing road was breached between Km 44+670 to Km 44+740 and the EPC Contractor has failed to maintain/restore the road stretch for heavy vehicle since 05.07.2023 despite of several instruction vide letter at ref (xiv), (xv), (xvii), (xxii), (xxv), & (xxxiv) above and verbal instruction given to the EPC Contractor. The same is also being monitored regularly by MoRTH.

11. **WHEREAS**, as per clause 11.1 of CA, *"the contractor shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice"*. It has been observed that the Contractor has not been serious on the project works as the NCR's issued were not timely closed by the Contractor and it took approx. 08 months for closing the same.

12. **WHEREAS**, PMU-Rhenock vide their letter no. 475, dated 20.12.2023 cited above at ref.(xii) has issued a Show Cause Notice to declare the EPC Contractor i.e., M/s Nalanda Engicon India Private Ltd - Ujjain Engicon Private Ltd (JV), 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.

13. **WHEREAS**, the EPC Contractor vide letter no. 119 dated 04.01.2023 cited above at ref.(vii) has furnished their written explanation and the reply of the EPC Contractor was found not satisfactory. The Authority in true spirit of the Contract Agreement and in interest of the Project has provided 99.86% encumbrance free land to the EPC Contractor as on date & also Schedule-H has been relaxed by the Competent Authority as requested by the Contractor to improve the liquidity of fund. Despite that, the EPC Contractor has failed to improve their performance due to continuous mismanagement, non-finalization of design & drawing, lack of planning, lack of monitoring, inadequate mobilization of equipment's/plants & machineries, inadequate stock/supply of materials, and organization of the work.

14. **WHEREAS**, a personal hearing was offered to the EPC Contractor on 05.01.2024 at NHIDCL, RO-Gangtok in accordance to MoRTH Circular dated 06.10.2021. In the personal hearing, the submission made by the Contractor was heard and found to be un-satisfactory and unacceptable as the deficiencies of the project were not addressed by the Contractor despite of several instructions/requests for improving the progress of the project. Notwithstanding, the progress of the Contractor was monitored for another one-month or more time from the personal hearing i.e., from 05.01.2024 till 24.02.2024 to see the improvement in performance of Contractor, before taking final decision on the matter of 'Non-Performer'. Nonetheless, none of the directions/targets were fulfilled by the EPC Contractor and it has failed to expedite the progress of work. The directions & status of work as on 24.02.2024 submitted is tabulated below: -

Sr. No.	Personal Hearing directions/targets given to the EPC Contractor on 05.01.2024	Status as on 24.02.2024	Days from the Minutes of Meeting 05.01.2024.
i.	The Managing Director of the EPC Contractor apprised about the progress of different items of the work wherein ED (P) expressed his displeasure on the progress of work on Rolep-Menla section (PKG-IIC). It was mentioned that the Physical and Financial progress achieved as on date for the said project is 30.85% and 30.07% respectively which is abysmally slow despite the project work having commenced from 25.05.2021.	<p>The physical and financial progress is 32.19% & 30.07% respectively as on 24.02.2024 i.e., 1.34% physical progress since the personal hearing.</p> <p>As per the revised approved work programme, the EPC Contractor was required to achieve 17.55 % & 17.55% physical and financial progress respectively in 7 months (i.e., June, 2023 to February 2024)</p> <p>However, The EPC Contractor has achieved only 6.94 & 5.70% physical & financial progress respectively in</p>	51 days (from 05.01.2024 to 24.02.2024)

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		<p>last 07 months from 01 Jun 2023 to 24th Feb 2024.</p> <p>Further, the EPC Contractor has failed to procure/maintain the construction material as per the requirement at project site.</p> <p>The EPC Contractor's progress is not up to par as per its own work programme submitted from time to time.</p>	
ii.	<p>ED(P) informed the Managing Director of the EPC Contractor that Design & Drawing of only 08 out of total 13 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 08 viaducts having its Design & Drawing approved, work on only 06 viaducts is in progress as on date. In this regard, Managing Director of the EPC Contractor mentioned that the work in the balance approved viaducts shall be started shortly which was not satisfactory response to ED(P), owing to the crucial importance of the project work in question.</p>	<p>The EPC Contractor has taken up the works on 08 nos. viaducts and 01 no. minor bridge out of 13 nos. viaducts and 2 nos. MNBs.</p> <p>In the ongoing structure works, the substructure work & superstructure work is delayed due to inadequate staging and shuttering material at the project site.</p> <p>Further, Design & drawing of 03 nos. (0.867 Km) out of 13 nos. (1.470 Km) viaduct and 01 (one) no. out of 02 MNB is still pending with the EPC Contractor till date.</p> <p>This clearly establishes the lackadaisical approach of the contractor in executing the project.</p>	
iii.	<p>The specific areas of concern and the potential root causes were discussed which are contributing to the substantial delay in the project's execution: -</p> <ol style="list-style-type: none"> It has been more than 3 months, there is no Project Manager at site to plan and execute works as per work programme. Lack of equipment, requirement at site - 95 nos. as per work programme, deployed only 63 nos. Unsystematic planning, monitoring, and management by the EPC Contractor. Adequate manpower not deployed, requirement at site - 762 nos. as per work programme 	<p>Status at site: -</p> <ol style="list-style-type: none"> The EPC Contractor has failed to mobilize the Project Manager at site as on date. Total 97 nos equipment has been mobilized at site. The EPC Contractor is working in unsystematic planning, monitoring, and management by the EPC Contractor. The EPC Contractor has failed to mobilize the manpower as per revised work programme. The EPC Contractor has taken up the 08 nos. viaducts works. Further, Design & drawing of 03 nos. (0.867 Km) out of 13 nos. (1.470Km) viaduct. 	

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	<p>me, deployed only 361 nos. Paver operator is not available due to which BSM is not being executed at site, thus the EPC Contractor is losing the working season.</p> <p>v. Design & Drawing of 2 nos. out of 13 nos. of viaducts are still pending for submission to AE for approval/review. Work started only in 6 nos. of viaducts out of total 8 approved.</p> <p>vi. In addition, Design & Drawing of 1 no. out of 2 nos. of MNB is still pending.</p> <p>vii. Construction materials are not adequate (staging & shuttering materials, cement, steel, emulsion and aggregates)</p> <p>viii. Road Breach in Km 44+600 (70 m) since 05.07.2023. No concrete steps taken as of yet by the EPC Contractor to construct the road due to which an adjacent private building is also in danger, the same is being monitored by Ministry as well.</p> <p>ix. It has been more than 2 years Hot mix plant is yet to be commissioned/functional by the EPC Contractor.</p>	<p>vi. 01 no. out of 02 nos. MNB work execution is still pending with the EPC Contractor.</p> <p>vii. The construction material is not procured/maintained as per the requirement at project site.</p> <p>viii. The Condition of the existing road is deteriorating day by day. The existing road was breached from Km 44+670 to Km 44+740 from dated 05.07.2023. Nonetheless, the EPC Contractor has failed to maintain/restore the road stretch for heavy vehicle. Due to poor maintenance of existing road, it has caused inconvenience to road users and adverse criticism from locals thereby loss of reputation to NHIDCL in the region.</p> <p>ix. The Hot Mix Plant is yet to be commissioned/functional by the EPC Contractor due to poor planning.</p>	
iv.	<p>Since the pace of progress is very slow, ED (P) informed the EPC Contractor that proposal for declaring the EPC Contractor as non-performer will be sent to NHIDCL-HQ as response of the EPC Contractor is found unsatisfactory. The representative of the EPC Contractor requested to not declare the company as non-performer and assured that the project will achieve min. 5% progress per month. The General Manager of PMU-Rhenock emphasized that at min. 10% of progress per month is required to achieve Milestone-III i.e., 19.08.2024 given that onset of monsoon will be from May onwards.</p>	<p>The EPC Contractor has not increased the pace of protection works and structural work which can be determined from the physical progress of Jan 2024 i.e., 1.34% only.</p> <p>The EPC Contractor has failed to procure sufficient staging & construction materials after a lapse of 51 days from personal hearing and due to which, the substructure, superstructure works of viaducts and BSM/C TSB works of pavement are being/getting delayed.</p> <p>It is submitted that the EPC Contractor must achieve 37.42% & 39.93% physical & financial progress respectively within 5-6 months to achieve the M-III (70%). With the present pa</p>	

		ce of progress, it is anticipated that the Contractor is likely to miss MS -III (70%) by due date. This is serious lapse on the part of EPC Contractor.	
v.	The meeting concluded with a decision that the Authority has no remedy available but to declare the EPC Contractor as non-performer since it is likely that the EPC Contractor will miss Milestone-III as the average progress of last 6 months is meagre 0.85% and the EPC Contractor lacks in adequate manpower and machineries, in addition their staffs are not trained well therefore showing poor performance due to unsystematic planning, monitoring and management.	The EPC Contractor is working in an irregular, unplanned & unorganized manner and there is no plan provided to expedite the work. It is likely that the EPC Contractor with the current pace of work will not achieve M-III.	

15. It is pertinent to mention that Authority's Engineer has advised the EPC Contractor to increase resources vide various letters (Ref. xiii, xiv, xviii, xvii, xxiii, xxxii, xxxiii, xxxviii, xxxix) so that targeted milestone can be achieved. The EPC Contractor has failed to progress the work as per their own Work Programme submitted on 01.06.2021 & 04.05.2023. The EPC Contractor has failed time and again to achieve the targets despite submitting revised work programme, hence, it clearly shows that M/s Nalanda Engicon Private Limited & M/s Ujjain Engicon Private Limited (JV), have no intention to improve the pace of progress to complete the project in time. In spite of issuance of several notices by Authority's Engineer and Authority, there has been no satisfactory progress at site and there is no sign of any improvement too. Therefore, the EPC Contractor has failed to perform due to continuous mismanagement, own failures, lack of planning and resources of the work.

16. THAT, NHIDCL HQ reviewed the progress of the project fortnightly. In all such meetings dated 02.01.2024, 20.11.2023, 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 to achieve the targets of various work activities. However, not a single target could be achieved by the EPC Contractor due to inadequate mobilization of resources.

17. FORBYE, ED (P) & GM (P) has regularly visited the site to monitor the progress of the project work issued letter ref. (viii, xiv, xv, xvi, xvii, xxxiv, xxviii, xlvii) to increase the progress of the work. Nevertheless, the progress of work has been dismal, and the EPC Contractor has been able to achieve only 31.43% financial progress in more than 33 months

from the appointed date i.e., 25.05.2021 to till 06.03.2024. This raises justifiable doubts in the mind of the Authority about the seriousness of the EPC Contractor.

18. THAT, 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 had led to poor progress of the project work.

19. WHEREAS, the EPC Contractor, M/s Nalanda Engicon Private Ltd - Ujjain Engicon India Private Ltd 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	20 days (14.06.2021)	The EPC Contractor has submitted stone crusher permit after lapse of 969 days. which shows the casual approach of the EPC Contractor towards project work.
b.	10.3	Construction of the Project Highway	-	The EPC Contractor started the viaduct work only in 08 nos. out of 13 nos. which is the critical activity of the project. The progress of the construction work is very poor and with the current pace of progress, it is likely that the Contractor will not achieve MS-III (70%) by the extended due date.
c.	10.2(i) & 10.2 (iv) (h)	Design & Drawings	90 days (23.08.2021)	The Design & Drawing of 0.867 Km (03 nos.) out of 1.470 Km (13nos.) of viaducts yet to be submitted by the EPC Contractor to Authority's Engineer for review/approval.
d.	10.4 (i)	Maintenance of Existing Highway	-	The Condition of the existing road is very poor. the existing road was breached from Km 44+670 to Km 44+740 from dated 05.07.2023. Nonetheless, the EPC Contractor has failed to maintain/restore the road stretch for heavy vehicle.
e.	11.18	Engagement of staff & labour	-	Inadequate staff & labours engaged at Site.

20. WHEREAS, it is in record that PMU-Rhenock has issued multiple Notices to the EPC Contractor in accordance with Contract Agreement as per following details:

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Sr. No.	Notice Details	Details
i.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2021-22/283 Dated: 25.08.2021.	Show Cause for placing the EPC Contractor in negative list.
ii.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2021-22/432 Dated: 25.11.2021.	Show Cause for slow progress of work.
iii.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2022-23/546 Dated: 07.01.2022.	Show Cause for slow progress of work, Delay in submission of designs & drawing, fail to mobilize adequate Manpower & Machineries at project site.
iv.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2022-23/075 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-IIC/2022-23/132 Dated: 27.05.2022.	Show Cause Notice for declaring the EPC Contractor as Non-Performer.
vi.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2022-23/466 Dated: 18.10.2022.	Show Cause for slow progress of work, Delay in submission of designs & drawing, fail to mobilize adequate Manpower & Machineries at project site.
vii.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2022-23/715 Dated: 03.02.2023.	Show Cause Notice for declaring the EPC Contractor as Non-Performer.
viii.	NHIDCL/PMU-Rhenock/Rhenock-Menla/Pkg-IIC/2023-24/475 Dated: 20.12.2023	Show Cause Notice for declaring the EPC Contractor as Non-Performer.

21. 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	Default of the EPC Contractor	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"

R. K. Singh

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 so that cash flow is continuous, and pace of progress be increased. However, the EPC Contractor has only achieved physical & financial progress as on 06.03.2024, after lapse of 1016 days, is 32.19% & 31.43% respectively. Further, the EPC Contractor has failed to achieve the targets given by the Authority in several review meetings and failed to get the approval of designs & drawings of the viaducts & other structures. 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.	Declaring the Contractor/concessionaire as non-performer till completion of project or achievement of project target as certified by the "Nominated Officer".
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22. 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 failed to mobilize adequate manpower, plant & machineries etc.

23. 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 project under it and has failed to perform the duties in an efficient manner and consistent with the highest standards of professional integrity and Good Industry Practice.

24. Therefore, in light of the aforesaid facts and circumstances, considering the non-professional attitude of M/s. Nalanda Engicon Pvt. Limited - M/s. Ujjain Engicon India Pvt. Limited (JV) and aforesaid contractual defaults, breaches, and wilful non-performance in

fulfilment of EPC 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 Nalanda Engicon pvt. Limited - M/s. Ujjain Engicon Pvt. Limited (JV) 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.

25. In accordance with 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 MORTH 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 in the said bid"*.

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

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

R. K. Singh

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

Copy for kind information:

- i. PPS to the Director General (RD) & SS, MoRT&H.
- ii. PS to the Director General (Border Roads), New Delhi.
- iii. PS to 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. PS to the Director (Tech) I & II, NHIDCL, New Delhi.
- vii. All ED (T/P), NHIDCL.

- viii. Sr. Technical Director, NIC, Transport Bhawan, New Delhi - with a request to upload the notice on Ministry's website.
- ix. General Manager (IT), NHIDCL-HQ, New Delhi - with a request to put the notice on the website and give wide publicity.

Sum