

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/Megh./JICA/NH-40(S-D)/P-II/2020/2427

Date:- 25.05.2023

To,

M/s ARSS Infrastructure Projects Ltd,
Plot No. 38, Sector-A Zone-D,
Mancheswar Industrial Estate,
Bhubaneswar-75101, Odisha

Sub: "Improvement/Widening to 2-lane with paved shoulders/4-laning of NH-40 between Shillong to Dawki road upto Bangladesh Border including Dawki Bridge from Km 93.490 to Km 123.800 (design Km 10.670 to Km 37.550) design length 26.55 km (Package-II) in the State of Meghalaya in EPC mode under JICA funding: **Termination Notice under Clause 23.1.2 of the Contract Agreement-reg.**

Ref:

- i. Contract Agreement signed on 09.12.2020
- ii. AE letter no. URS/AE-NHIDCL/P-II/NH-40/Cure Notice/22-23/380, dated 14.12.2022
- iii. EPC Contractor letter no. ARSS/SHL/NHIDCL/P-II/21-22/319 dated 08.12.2022
- iv. PMU letter no. PMU-Mylliem/P/SD/Contractor(Pkg-II)/12 dated 02.12.2022
- v. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1120 dated 18.11.2022
- vi. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1110 dated 17.11.2022
- vii. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1052 dated 04.11.2022
- viii. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1051 dated 04.11.2022
- ix. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1035 dated 01.11.2022

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[Signature]

- x. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1012 dated 29.10.2022
- xi. PMU letter no. PMU -Mylliem /P/SD/Contractor(Pkg-II)/1000 dated 27.10.2022
- xii. NHIDCL/Megh./JICA/NH-40(S-D)/P-II/2020/2275dated 21.10.2022
- xiii. PMU-Mylliem/PSD/08/Contractor(Pkg-II)/281dated 08.06.2022
- xiv. PMU-Mawkyrwat/P/SD/08/Contractor(Pkg-II)/3676dated 01.11.2021
- xv. EPC Contractor's letter ARSS/SHL/NHIDCL/P-II/22-23/333 dated 14.01.2023
- xvi. NHIDCL/ROSHG/SD/M-W/2021/302/1/3083 dated 28.01.2023
- xvii. NHIDCL/ROSHG/SD/M-W/2021/302/1/3169 dated 16.02.2023
- xviii. EPC Contractor's letter ARSS/SHL/NHIDCL/P-II/22-23/358 dated 07.03.2023
- xix. AE letter no. URS/AE-NHIDCL/P-2/NH-40/QEMR/22-23/414,dated 14.03.2023.
- xx. PMU-Mylliem/PSD/08/Contractor(Pkg-II)/1667 dated 14.03.2023
- xxi. NHIDCL/RO-SHG/SD/M-W/2021/302/1/3282 dated 15.03.2023
- xxii. PMU Letter no. PMU-MYLIEM/P/SD/08/Contractor (PKG-II)/166 dated 13.05.2023.

Sir,

A Contract Agreement dated 09.12.2020 was executed between National Highways & Infrastructure Development Corporation Ltd (herein after referred as "NHIDCL/ Authority ") and M/s. ARSS Infrastructure Projects Ltd.(herein after referred as "EPC Contractor") for the work of "Improvement/Widening to 2-lane with paved shoulders/4-laning of NH-40 between Shillong to Dawki road upto Bangladesh Border including Dawki Bridge from km 93+490 to km 123+800 (design km 10+670 to km 37+550) design length 26.55 km (Package-II)(hereinafter called the 'Subject Project') in the State of Meghalaya in EPC mode under JICA funding in pursuance to the issue of LoA dated 24.11.2020 by NHIDCL. The Appointed Date for the work was declared as 26.12.2020, which was accepted by the Contractor without demur or protest. The Scheduled Completion Date was 25.12.2022 which has been extended to 13.09.2023.

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2. With reference to the subject mentioned above, it is to bring to your kind attention that you have been repeatedly directed to expedite the progress of work by setting up institutional mechanism & procedure, mobilization of manpower, equipment, plant & machinery, mobilization of qualified & experienced key personnel/staff, establishment & functioning of field laboratory, however you have failed to comply with the directions of the Authority time and again and also have failed to achieve the desired progress at site as a result of which the current physical progress is 16.7% and current financial progress is merely 15.308%, whereas Physical progress of only 3% and financial progress of only 2.366% has been achieved by the Contractor during previous 06 (Six) months.

3. Your attention is drawn towards the following provisions of Contract Agreement:

- i. Clause 10.3. (i) of Contract Agreement: *"The 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. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The 730th (Seven Hundred and Thirtieth) day from the Appointed Date shall be the scheduled completion date (the "Scheduled Completion Date") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof."*
- ii. Clause 1 of Schedule-J of the Contract Agreement : *"During Construction period, the Contractor shall comply with the requirements set forth in this Schedule J for each of the Project Milestones and the Scheduled Completion Date. Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Authority of such compliance along with necessary particulars thereof"*

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 274th (Two Hundred and Seventy Fourth) day from the Appointed Date (the "Project Milestone-I").

2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have commenced construction of the Project Highway and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 10% (ten per cent) of the Contract Price.

3. Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 548th (Five hundred and Forty Eighth) day from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with construction of the Project Highway and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 30% (thirty per cent) of the Contract Price.

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4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 821th (Eight hundred and Twenty One) day from the Appointed Date (the "Project Milestone-III").

4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Project Highway and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 60% (sixty per cent) of the Contract Price.

5 Schedule Completion Date

5.1 The Scheduled Completion Date shall occur on the 1095th (One Thousand and Ninety Five) day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

6 Extension of time
Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly

4. Whereas, NHIDCL, HQ vide letter dated 21.10.2022 has accorded approval to the EOT for 263 days from the Scheduled Date of completion for the subject project and the details of various milestones vis-à-vis achievement made by EPC Contractor is given as under:

Sl. No	Mile Stone	Financial progress	Days	Milestone Date	Milestone as per approved EOT	Achieved on
1.	I	10 %	180	24.06.2021		12.09.2022
2.	II	30 %	360	21.12.2021	14.06.2022	-
3.	III	60 %	545	24.06.2022	01.03.2023	-
4.	IV	100 %	730	26.12.2022	13.09.2023	-

5. Whereas the progress made by the EPC Contractor is severely lagging behind the schedule, despite the fact that significant stretch of 24.653 Km. encumbrance free land out of total project length of 26.55 Km is available with the EPC Contractor without any obstruction.

6. Whereas, it is noted with great concern that EPC Contractor has already missed the Milestone – II & III as per approved schedule of EoT. Further, with the slow pace of work coupled with inadequate deployment of requisite man power & machineries and non – availability of requisite material, it is likely

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that EPC Contractor is bound to miss the revised completion date of the project as per approved EoT.

7. Whereas as per the scope of the project given, the EPC Contractor is required to complete the Construction/widening of **112 Nos. of Culverts, 04 Nos. of Minor Bridges & 01 No of Major Bridge**. In this connection, it is stated that EPC Contractor has shown poor performance with respect to the construction of structures as specified above. Till date, the EPC contractor has completed only 18 Nos of Culverts and 1 SVUP without their complete protection works. Further, no activity with respect to construction work of balance structures have been started by the EPC Contractor at site. Poor performance of the EPC Contractor on structural front was also highlighted by ED (P) RO-Shillong and ED (IV) NHIDCL HQ during site visit on dated 24.05.2022 & vide Authority letter of even no.281, dated 08.06.2022.

8. Whereas, timely approval of designs & drawing and timely execution of the project is sole responsibility of the EPC Contractor. However, suitable actions in this regard is yet to be taken by the EPC Contractor.

Current status of design & drawings submission by the EPC Contractor as on 16.05.2023 is mentioned below:-

Sl No	Item	Span arrangement as per CA	Scope as per schedule -B	Submitted by the EPC Contractor	Reviewed by AE	Remarks
			Nos	Nos	Nos	
1	Hume Pipe Culvert	1x1.2	36	23	23	13 Nos. yet to be submitted by Contractor
2	Box culvert	2x1.5, 2x2, 3x3, 4x4, 5x4, 5x5, 6x4, 6x6	72	40	40	Balance 32 Nos. yet to be submitted by Contractor
3	Slab Culvert	3x6.5, 6x7, 4x7, 4x6.5	4	Nil	-	Balance 4Nos. yet to be submitted

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						d by Contract or
						Balance 4Nos. yet to be submitted by Contract or
4	VOP	1x35	4	Nil	-	to be submitted by Contract or
5	SVUP	1X7.00	3	3	3	
6	Minor Bridge	1.1x15+1x9+1x15 2.1x25.4 3.1x9.6+1x25.5+1x9.6 4.1x25.4	4	Nil	-	Balance 4Nos. yet to be submitted by Contract or
8	Major Bridge	5x30	1	Nil	-	Yet to be submitted by Contract or
7	Breast Wall		LHS=1530 M RHS=1110 M	Yes	Reviewed	Only Typical Drawing submitted by Contract or, However detailed drawing yet to be Submitted
8	Retaining Wall		LHS=2490 M RHS=2120 M	Yes	Reviewed (650 m)	Balance 3960m yet to be submitted by contractor

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9. Whereas, construction of structures is one of the important and crucial activity of the project, however, despite a lapse of 28 (twenty eight) months from appointed date, the design & drawings are yet to be reviewed/ approved by the AE due to non-submission from the contractor's end. In addition to this the geotechnical investigation for all the structures has not been done by the EPC Contractor till date. This clearly shows the reluctance, indifference & lack of interest of the contractor towards the project activities.

10. Whereas notice for action against the EPC Contractor as per clause 10.3.2 & 10.3.3 of CA for failing to achieve Milestone-II has been issued vide Authority vide letter dated 04.11.2022, wherein it was directed to submit an explanation within 20 days for delayed achievement of Milestone- II and for not complying with the CA provisions, however, the EPC Contractor has not taken the cognizance of the ibid letter till date and neither any assurance/intimation from the EPC Contractor has been received nor any improvement in the performance of the EPC Contractor was observed at site, which clearly reflect the casual approach of the EPC Contractor towards the project activities.

11. Whereas, DBM targets to be achieved during the current financial year i.e upto March , 2023 was committed by EPC Contractor during the review meeting held under the chairmanship of Executive Director (P) RO-Shillong dated 17.11.2022 in which the committed target for the month of November, 2022 was 2 km and total 12 km target in the FY 22-23. Also, NHIDCL vide letter dated 17.11.2022 has directed EPC Contractor to take cognizance of the matter and ensure the achievement of DBM targets within the stipulated time frame with a weekly report submission to NHIDCL.

12. Whereas, it is observed that the EPC Contractor has achieved Nil DBM work in the month of November 2022, only 1.57 km in the month of December 2022, 1.27 km in the month of January 2023 and 0.37 km in the month of February 2023 and NIL in the month of March 2023 (cumulative till April 2023 is 3.7 Km). This clearly depicts that EPC Contractor did not deploy adequate resources manpower, machineries and did not ensure the requisite availability of material at site to achieve the desired pace of work and failed to achieve the set forth targets despite repeated directions from the Authority & Authority's Engineer to boost the progress of work.

13. Whereas, it is observed that EPC Contractor has shown poor performance w.r.t. committed target of work during the last month i.e April, 2023 which is evident from the following facts mention in table :-

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SI No	Items	Unit	Target in April, 2023	Achievement in April, 2023
	Widening and strengthening of existing road			
i	Sub base course (GSB)	km	2.44	0
ii	Non bituminous base course (WMM)	km	2.50	0
iii	Bituminous base course (DBM)		3.5	0
iv	Wearing Course (BC)	km	4	0.22
	Reconstruction realignment /bypass (flexible pavement)			
i	Bituminous base course (DBM)	km	NIL	0.34
i	Wearing Course (BC)	km	1.5	0.6
ii	Culverts	Nos	11	0
iii	Minor Bridges	Nos	1	0
iv	Major Bridge (Superstructure)	Nos	1	0
v	Road Side Drain	m	4000	0

From the above table, it is obvious that the progress of work is found to be extremely slow and unsatisfactory as compared to the targets committed by the EPC Contractor in the work program. This is because of inadequate/deficient mobilization of manpower at site along with non-availability of construction materials at site which evidently demonstrates that EPC Contractor has failed to carry out work as targeted in the work program or self-commitment made by EPC Contractor due to the reasons solely attributable to the EPC Contractor.

14. Whereas the progress made by the EPC Contractor is severely lagging behind the schedule despite the fact that the significant stretch of 24.653 Km out of total project length of 26.55 Km. is available with the EPC Contractor. Month wise Physical as well as Financial progress made by the EPC Contractor till date is tabulated below:

Sl. No.	Month	Physical Progress in %	Financial Progress in %
1.	Cumulative upto August, 22	11.2	9.558
2.	September, 22	1.5	2.733
3.	October, 22	1.0	0.655
4.	November, 22	0.7	0.734
5.	December 22	0.5	0
6.	January ,23	0.8	1.628
7.	February ,23	0.50	0

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8.	March,23	0.20	0
9.	April,23	0.30	0

15. Whereas, time and again it was communicated to EPC Contractor by the Authority and Authority's Engineer to maintain the road & to keep the road in smooth & traffic worthy condition. However, at some locations although maintenance work was carried out by EPC Contractor but the quality of maintenance work was poor & unsatisfactory resulting to again deterioration of the road in one or two months. It is also observed that this poor maintenance is due to lack of mobilization of additional resources, & poor quality of maintenance work by EPC Contractor thereby causing traffic jam and other unwanted incidents affecting the commuters on daily basis.

16. Whereas, the Authority has issued Cure Notice to the EPC Contractor vide letter dated 02.12.2022 for the defaults of EPC Contractor. Further, in response to the Cure Period Notice, the EPC Contractor submitted its reply dated 08.12.2022, and made further representations instead of rectifying the defects. Needless to say that since the very beginning the approach of the EPC Contractor was very casual towards fulfilment of its obligations as specified under Contract Agreement.

17. Whereas, the Authority after perusal of the submission made by EPC Contractor vide letter dated 08.12.2022, found it to be non-tenable and vague as EPC Contractor has miserably failed to cure any of the Defaults as specified in the Cure Period Notice thereby causing delay in progress of the projects and causing irreparable loss to the Authority besides putting great inconvenience to the road users.

18. Whereas the EPC Contractor has requested for foreclosure of the project citing various reasons vide letter dated 14.01.2023 to which this office vide letter dated 16.02.2023 has rebutted all the reasons of Authority's Default and the request of EPC Contractor was not found agreeable to the Authority. In the same letter Authority has also intimated the EPC Contractor that they have not taken any cognizance of the Intention to Termination Notice and after lapse of 15 days the EPC Contractor has not replied against the Intention to Termination Notice issued vide letter dated 28.01.2023. This clearly justifies the non-seriousness of the EPC Contractor towards the Contract Agreement. However, the EPC Contractor vide letter dated 07.03.2023 has replied to Intention to Termination Notice (38 days after issuance of Intention to Termination Notice) and the reply was not satisfactory citing the fact that despite giving considerable time the EPC Contractor could not cure the defaults on the ground and has not achieved any progress in the work.

19. Whereas, Authority's Engineer has intimated Authority vide letter dated 09.05.2023 that the EPC Contractor has also started to demobilise its

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machineries without the prior approval of Competent Authority and vide PMU letter dated 13.05.2023 EPC Contractor has been instructed not to abandon the project site in view of recent landslides during upcoming monsoon, further the EPC Contractor has also been intimated that due to unjustified demobilisation of manpower and machinery if any untoward incident happens then this will further attract criminal proceedings against the EPC Contractor.

20. Whereas, the EPC Contractor has caused breached to the provisions of Contract Agreement and is in defaults in terms of Sub Clause (c) (d), (e) and (r) of Clause 23.1.1 of Article 23 of Contract Agreement, which is reproduced as under :-

23.1.1 (c), The Contractor does not achieve the latest outstanding project Milestone due in accordance with the provisions of Schedule –J, subject to anytime Time Extension, and it continues to be in default for 45 (forty-five) days;

(d) the contractor abandons or manifests intention to abandon the construction or maintenance of the project highway without the prior written consent of the Authority.

(e) The contractor fails to proceed with the works in accordance with the provision of clause 10.1 or stops Works and / or the maintenance for 30 (thirty) days without reflecting the same in the current programme in such stoppage has not been authorized by the Authority's Engineer.

(r) The Contractor commits a default in complying with any other provision of this Agreement if such a default causes Material Adverse Effects on the Projects or on the Authority.

21. Whereas, the Authority has extended all possible efforts to expedite the progress of work & timely completion of the project, however, EPC Contractor could not achieve desired progress even after issuing Cure Notice to cure the defaults and the EPC Contractor has miserably failed and continues to be in default & did not show any sign of improvement w.r.t expediting the pace of work progress & failed to own commitment made in the meeting held with Authority on 23.04.2022, 03.06.2022, & 04.07.2022. The EPC Contractor has repeatedly shown no intention to execute the project as per Contract Agreement.

22. Whereas, due to outbreak of COVID-19, Authority has given considerable relaxations to the EPC Contractor, but it is observed that EPC Contractor could

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not extract full utilization of the relaxations made & still resulted in poor performance.

23. Whereas, the Authority's Engineer vide its letter dated 14.12.2022 has intimated the Authority that the EPC Contractor has miserably failed to cure any defaults as mentioned in the Cure Notice dated 02.12.2022 and submitted its firm recommendation to take further action as per Clause 23.1.1 & 23.1.2 of Contract Agreement, due to frequent occurrence of defaults of EPC Contractor.

24. Whereas, it has become evident that EPC Contractor is not in a position to execute the Contract and continues to be in default of most of the Obligations as brought out in the "Cure Notice Period" as well as "Intention to Terminate notice" dated 28.01.2023, leading to a Major Material Adverse Effect on the Contract .EPC Contractor neither took proactive action to execute work nor submitted reply of letter issued Authority vide Sl. No (ii).

25. Whereas, keeping in view the EPC Contractor's non-seriousness to execute the project, public interests and public money involved causing a huge loss to the Government Ex-Chequer; and Authority is left with no other option but to terminate the Contract in accordance with the provisions of Clause 23.1.2 of the Contract Agreement.

26. In the light of the aforesaid non-exhaustive fundamental breaches of the Contract, and in view of the EPC Contractor's persistent & sustained gross defaults, the Authority is left with no other option but to terminate the Contract in accordance with the provisions of Clause 23.1.2 of Article 23 of the Contract Agreement on account of Contractor's Default with immediate effect.

27. The provisions of Article 23 shall henceforth apply.

28. Whereas, as a consequence, and in accordance with Clause 23.4 ,upon Termination of this Agreement in accordance with the terms of Article 23, the Contractor shall comply with and conform to the following:

- a. Deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 23;
- b. Deliver all relevant records, reports, Intellectual Property and other license pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawing for the Work;
- c. Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- d. Vacate the Site within 15 (Fifteen) days.

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29. Whereas, the Authority, upon termination on account of Contractor's Default, under Clause 23.6 of the Contract Agreement shall also encash and appropriate the Performance Security and Retention Money, for its losses including damage in accordance with Clause 10.3.2 & 10.3.3 of the Contract Agreement, and recovery of expenditure incurred against maintenance executed at Contractor's risk and Cost for failure to maintain the project highway in accordance with Clause 10.4. The Authority shall also encash and appropriates the bank guarantee for and in respect of the outstanding advance payments and interest thereon. The Contractor is hereby directed to restrain any person claiming through or under Agreement from entering upon the site or in part of the project except for taking possession of materials, stores, implements, construction plants & equipment, which do not vest in the Authority as per the Contract Agreement with the prior permission of the Authority.

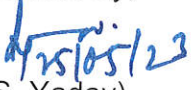
30. Whereas, the Authorized Signatory of the EPC Contractor is directed to meet the undersigned along with all the details pertaining to transfer the rights in accordance with Clause 23.7 at the earliest, after the receipt of this "Termination Notice"; and

31. In pursuance to this Termination Notice, your firm shall perform no further services other than those reasonably necessary to close this Contract Agreement.

32. This Notice is issued without prejudice to any other right or remedy available to the Authority under the Contract Agreement and/ or applicable law.

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

Yours Sincerely,


(R.S. Yadav)

Executive Director (T)
NHIDCL HQ, New Delhi

Copy to:

- i. PS to MD NHIDCL
- ii. PS to Dir (T)
- iii. ED(T/P)s, NHIDCL
- iv. GM(IT), NHIDCL HQ (to upload the notice on the website)

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