

**TERMINATION NOTICE
(WITHOUT PREJUDICE)**

NHIDCL/Tripura/NH-208A/Kailashahar-Kurti(P3)/2019/1127

Date: 21.07.2023

To,

M/s A K Construction Company,
Village-Bhadiwa, PO Amba,
Dist. Varanasi, Uttar Pradesh-221104
Email: akconstructiontripura@gmail.com

[Kind attention: Shri A K Pathak, Partner, M/s A.K Construction Company]

Subject: Rehabilitation and Up-gradation of road from design Km 25.250 to Km 36.460 (Total Length: 11.210 Km) of Kailashahar - Kurti Bridge section of NH-208A to two lane with paved shoulder in the State of Tripura on EPC basis (Package-III)-
Termination Notice under Clause 23.1 of Contract Agreement.

Ref: (i) NHIDCL/RO-Agt/W/T/ Kaitashar-KurtiBridge(NH-208A)/309/823 dated 28.02.2023

(ii) NHIDCL, RO-Agartala letter no. NHIDCL/RO-Agt/W/T/Kailshahar-Kurtibridge(NH-208A)/309/918 dated 29.03.2023.

(iii) NHIDCL, PMU-Dharmanagar letter no. NHIDCL/PMU Dmr/EPC/208A/P3/12(1)/2022-23/1421 dated 23.03.2023.

(iv) Authority's Engineer letter no ARKI/AEK/NHIDCL Dmr/AKCC/20-21/1121 dated: 22.03.2023

(v) Authority's Engineer letter no ARK-/AKCC/PKg-III(Kls-Kurti)/NH-208A/NHIDCL/2021-20/1814 dated 22.03.2023

(vi) EPC Contractor letter no AKCC/NHIDCL/ED(P)/R.O-Agt/Kls-Krt/2022-23/258 dated: 09.03.2023.

(vii) NHIDCL, RO-Agartala letter no. NHIDCL/RO-Agt/W/T/Kailashar-KurtiBridge(NH-208A)/309/823 dated 23.02.2023.

(viii) NHIDCL, PMU-Dharmanagar Letter no- NHIDCL/PMU-Dmr/EPC/208A/P3/12(1)/2022-23/1377 dated 18.02.2023.

(ix) Authority's Engineer letter no. ARKI/AKCC/NHIDCL Dmr/AE K/2022-23/1086 dated: 17.02.2023.

(x) NHIDCL, RO-Agartala letter no. NHIDCL/RO-Agt/W/T/Kailashar-KurtiBridge(NH-208A)/309/ 1746 & 1762 dated 28.03.2022 & Corrigendum dated 31.03.2022.

(xi) NHIDCL, RO-Agartala letter no NHIDCL/RO-Agt/W/T/Kailashar-KurtiBridge(NH-208A)/309/60 dated 13.05.2023

(xii) Order dated 17.04.2023 of Hon'ble High Court of Delhi.

(xiii) Personal Hearing given to the Contractor on 07.06.2023 by MD NHIDCL at NHIDCL HQ, New Delhi. Minutes issued vide letter NHIDCL/Tripura/NH-208A/Kailashahar-Kurti (P3)/2019 dated 21.06.2023.

(xiv) EPC Contractor letter no AKCC/NHIDCL/ARKITECHNO/KLS-KRT/2023-24/71 dated 08.06.2023.

(xv) Authority's Engineer letter no. ARK-/AKCC/PKG-III(Kls-Kurti)/NH-208 A/NHIDCL/2020-21/400 dt. 22.06.21

(xvi) Authority's Engineer letter ARK-/AKCC/PKG-III(Kls-Kurti)/NH-208 A/NHIDCL/2020-21/445 dt. 08.07.21

(xvii) Authority's Engineer letter ARK-/AKCC/PKG-III(Kls-Kurti)/NH-208 A/NHIDCL/2021-22/969 dt. 21.02.22

(xix) Authority's Engineer letter ARK-/AKCC/PKG-III(Kls-Kurti)/NH-208 A/NHIDCL/2022-23/1505 dt. 01.09.22

(xx) Authority's Engineer letter No.: ARKI/AEManu/NHIDCL/Tripura/AKCC/21-22/022403 dt. 24.02.22

(xxi) Authority's Engineer letter No.: ARK/AKCC/PKG-III(Kls-Kurti)/NH-208A/NHIDCL/2021-22/979 dt. 24.02.22

Sir,

1. **Whereas**, LoA for the work of " Rehabilitation and Up-gradation of road from design Km 25.250 to Km 36.460 (Total Length: 11.210 Km) of Kailashahar - Kurti Bridge section of NH-208A to two lane with paved shoulder in the State of Tripura on EPC basis (Package-III)" was issued to M/S A.K construction Company on 03.06.2020 and the Contract Agreement was signed between NHIDCL & M/s A.K. Construction Company on 15.06.2020 for contract price of Rs. 73.21 Crore. The Appointed Date for the project was declared as 03.08.2020. M/s A.K Construction Company was obliged to complete the subject project on 02.02.2022 as per Schedule-J of Contract Agreement.

2. **Whereas**, as per Article 4.1 of Contract Agreement "the Contractor shall undertake the 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 this Agreement and moreover follow the Contract Agreement and the obligations cast thereon with full adherence, diligence and sincerity.

3. **Whereas**, the EPC Contractor should have commenced all requisite activities like setting up of project camp, mobilization of equipment's & machineries, survey , submission of design & drawings, methodology, deployment of manpower, setting up of field laboratory, obtaining applicable permits etc and any other activity assigned to the contractor by the Authority to enable construction of Project Highway immediately after signing of the Contract Agreement within stipulated time as per



provisions of contract, to the extent that such work is ready for execution. The EPC Contractor has not fulfilled contractual obligations, thus in violation of Clause 4.1, Clause 10.1, Clause 10.2, Clause 11.1 & Clause 11.3 of Contract.

4. **Whereas**, the EPC Contractor have been instructed several times to mobilize the required manpower, machinery and other resources at the project site on priority so that the progress of the project is not hampered. However, the contractor has miserably failed to carry out any such activities and is reluctant to achieve the Project Milestones as stipulated in the Contract Agreement, which shows that the contractor is delaying the project of national and strategic importance. As per the Schedule J of contract agreement, the time schedule for achieving the project milestones is tabulated below:

Milestone	Financial progress	Falling on	Due Date as per CA	Extended milestone as per EOT	Achievement
1 st	10%	189 days from AD	08.02.2021	18.12.2021	23.03.2022
2 nd	35%	324 days from AD	23.06.2021	05.05.2022	Not Achieved
3 rd	70%	459 days from AD	05.11.2021	05.08.2022	Not Achieved
Schedule completion	100%	548 days from AD	02.02.2022	12.12.2022	Not Achieved

5. **Whereas**, as mentioned above, the EPC Contractor has achieved Milestone I in March 2022 and after lapsing achievement of revised Milestone I on 18.12.2021, the Contractor further failed to achieve Milestone II, even after a lapse of more than 1000 days from the Appointed Date. Further, after lapse of more than 32 months, the EPC Contractor has achieved only 18.67% financial progress which is very disappointing. Despite repeated instructions from Authority NHIDCL and Authority's Engineer, the EPC contractor has not put much effort in completing the project and the last one-year monthly physical progress is tabulated as under:

Month	Mar' 22	Apr' 22	May' 22	Jun' 22	Jul' 22	Aug' 22	Sep' 22	Oct' 22	Nov' 22	Dec' 22	Jan' 23	Feb' 23	Mar' 23	April' 23	May' 23
Monthly Progress (%)	1.32	0.51	0.87	0.00	0.28	0.00	0.10	0.00	1.66	2.16	0.67	0.64	0.29	0.79	0.00
Cumulative Physical progress (%)	10.82	11.33	12.20	12.20	12.48	12.48	12.58	12.58	14.24	16.46	17.13	17.77	18.06	20.30	20.30

6. **Whereas**, it is evident from above table, that contractor is not progressing with the work diligently and the resources in term of manpower, plant and equipment are bare minimum and does not commensurate to the requirement of the project. The Contractor is also not showing any inclination to achieve desired progress. It is evident that contractor is progressing with decimal progress.

7. Whereas, the EPC Contractor has failed to establish full-fledged site laboratory at site and same has not been completely set up till date, as required as per Article 11 of contract agreement. Till date, inadequate mobilization in terms of plant, equipment and manpower has been observed at site and no realistic work programme has been submitted by the EPC Contractor to monitor the project, as required as per Clause 10.1 of contract agreement. Further, no sufficient stock of raw material is found at site to fetch the need of site.

8. Whereas, Authority's Engineer and Authority have issued several "Cure Period" notices dated 22.06.2021, 08.07.2021 & 21.02.2022 to contractor and "Slow Progress" notices dated 20.04.2021, 22.06.2021, 27.09.2021, 08.11.2021, 24.12.2021, 26.04.2021, 25.09.2021, 29.10.2021, 11.12.2021, 16.12.2021 & 04.07.2022 as per Clause 23.1 of the Contract Agreement due to poor progress of work, inadequate mobilization of manpower, materials, machinery & non-achievement of the milestones. Apparently, EPC Contractor has miserably failed to keep the progress of work as targeted for the completion of project. Further, it is worth mentioning that during January 2022 almost 11 Km i.e., more than 98 % of encumbrance free project length was handed over to EPC Contractor and 100% encumbrance free land was handed over in December 2022. However the snail pace of work is being witnessed at site and physical progress achieved till 30th April 2023 is merely 20.30% only.

9. Whereas, earlier "Intention to Termination" notice was issued to the EPC Contractor vide letters dated 28.03.2022 under ref.(ix). After passing of more than 8 months from issuance of 'Intention to Termination' notice, the Contractor submitted the technical proposal with design of pavement to IIT for vetting and after vetting of the same, Authority's Engineer vide letter dated 05.01.2023 accorded approval for revised design on 05.01.2023. However, no desired progress has been achieved by EPC Contractor at site in spite of several letters written for expediting the work progress by Authority's letter dated 12.01.2023, 30.01.2023 & 17.02.2023. The progress of the project highway is minimal and still not planned, even after lapse of more than 31 months from appointed date. The progress of the project highway is minimal and still not planned, even after lapse of more than 32 months from appointed date.

10. Whereas, fresh Notice for 'Intention to Terminate the contract' has been issued by NHIDCL RO-Agartala to the contractor vide letter dated 23.02.2023 cited at ref(vi) due to inadequate mobilization in terms of manpower, equipment and machineries on site and Contractor's lack of ability to achieve the progress in working season, which demonstrates the intention of Contractor to abandon the project.

11. Whereas, the EPC Contractor vide letter dated 09.03.2023 cited at ref(v) submitted reply to the Intention to Terminate notice stating that treatment of unsuitable soil in the project area requires positive change of scope and land handed over for construction is in piecemeal manner and the same has been found unsatisfactory.

12. Whereas, the reply of EPC Contractor has been examined by Authority's Engineer and para-wise reply has been furnished vide AE's letter cited at ref (iii). As there is no substantial progress observed at site, Authority's Engineer vide letter

cited at ref(iii) recommended for Termination of Contract and copy of the par-wise reply addressing to the concerns of the EPC Contractor was also given to the Contractor vide letter cited at ref(iii).

13. **Whereas**, the reply submitted by the Contractor to the notice for Intention to Terminate the Contract has also been examined by NHIDCL, PMU Dharmanagar and unsatisfied with the non-justified reply of the Contractor, PMU-Dharmanagar has recommended for Termination of the Contract vide letter dated 23.03.2023 cited at ref(ii).

14. **Whereas**, the reply of the EPC Contractor submitted vide letter cited at ref(v) to the 'Intention to Termination' notice dated 23.02.2023 issued by NHIDCL vide letter cited at ref(vi) has been examined and para-wise comments to the contentions of the EPC Contractor has been addressed by NHIDCL & conveyed to the EPC Contractor vide letter cited at ref(x).

15. **Whereas**, M/s A.K Construction Company approached Hon'ble Delhi High Court seeking relief on the matter of intention to terminate the contract by NHIDCL.

16. **Whereas**, Hon'ble High Court of Delhi vide order cited at ref(xi) in case of M/s A.K. Construction Company v/s NHIDCL (O.M.P(I) (COMM)114/2023 & IA.6965/2023 & 6966/2023) stated that before taking a final decision on the 'notice to terminate' the Agreement dated 23.2.2023 issued by the respondent no. 1(NHIDCL), the respondent no. 1 (NHIDCL) shall grant an opportunity of hearing to petitioner as principle of natural justice and in case, the respondent no. 1 proceeds to terminate the Agreement, the petitioner shall have its remedies open to be taken in accordance with law.

17. **Whereas**, in compliance to directions of Hon'ble High Court of Delhi, an opportunity for personal hearing was given to you on 07.06.2023 in a meeting called by MD NHIDCL at NHIDCL, HQ in New Delhi, wherein authorized representative of M/s A. K. Construction presented that the slow progress in the project happened because of existence of Marshy Land along the road alignment through which construction of the subject highway is proposed which requires additional cost and the positive Change of Scope (CoS) proposal submitted was not approved by NHIDCL, without which they are not in the position to execute the work and they are willing to complete the work if CoS of Rs. 14 Crore is granted by NHIDCL. He further mentioned that CoS proposal along with technical details will be submitted by 08.06.2023 and time extension will also be required to complete the project, alternatively the contractor proposed de-scoping of 6.93 km stretch where there is presence of marshy soil. He further informed that the reply to 'Intention to Terminate' notice issued by NHIDCL was submitted in the month of March 2023.

18. **Whereas**, after hearing to the position of M/s A.K Construction Company, NHIDCL informed that the submissions made by M/s A.K Construction Company for Change of Scope was not found eligible as per provisions of EPC Contract, as it is the responsibility of the EPC Contractor to design the road and adopt methodology for execution of the work and the stand of the NHIDCL has already been informed to the contractor. It was also informed that time extension of 313 days has already been granted to M/s A.K Construction Company and any proposal if further submitted by



the contractor on 8.6.2023 may be again examined as per contract provisions. NHIDCL informed M/s A.K Construction Company that the final decision on the termination of the contract shall be taken duly considering provisions of the contract, reply of the contractor on the Intention to Terminate notice and considering all the factors involved with the project. Minutes of Meeting is cited at ref(xii).

19. **Whereas**, vide your letter cited at ref(xiii), you have again submitted representation seeking positive change of scope, extension of time and seeking further time of three weeks for submitting proposal on technical solution in execution of the subject road work. This has been observed to be again contradicting to the assurance made by you during meeting on 07.06.2023 wherein it was assured by you to submit proposal on 08.06.2023. It is to also mention that several opportunities and time extensions have been given to you, but no desired progress has been achieved till date. Your submissions for Change of Scope have also been examined and has been not found to be eligible as per contract provisions.

20. **Whereas**, the contentions of the EPC Contractor have been rejected, as the EPC Contractor has not adhered to provisions of the contract & RFP of the subject work and thus had committed default in fulfilling obligations of the EPC contract agreement, thereby leading to cost-overflow & time overrun to the project.

21. **Whereas**, the issue of non-achievement & progress as per work program has been discussed in project review meetings on monthly basis and it has been seen that the contractor has been consistently failing to meet monthly targets as set forth for project completion and as promised by EPC Contractor. Moreover, as per Clause 10.1.3 of the EPC agreement, the EPC contractor has to submit a work programme within 30 days from appointed date using networking techniques for review of Authority's Engineer, whereas the EPC contractor has not submitted the realistic resource-based work program till date. In spite of favourable working condition and entire project duration as per Contract /extended period has been elapsed. The Contractor failed to mobilize full resources, machinery and manpower to the desired extent at the project site, which shows the lackadaisical approach toward execution/completion of the work, which has resulted in the non-achievement of desired progress to achieve requisite work Targets as per Contract agreement.

22. **Whereas**, notwithstanding the above failure on the part of the Contractor, it seems that Contractor has shown complete disregard for public importance of the project and have also shown total disregard to the strategic utility of the project. After lapse of about more than 32 months since the Appointed Date, the Contractor has achieved only 20.30 % physical progress till 30th May 2023 which is far below par. Clearly, in the absence of satisfactory performance of the EPC Contractor and lack of proper construction planning, machinery, manpower and reluctant behavior of EPC Contractor, all the revised Project Milestone have been missed. The deficiencies & defaults on part of EPC contractor to undertake construction work is evident from the item wise progress of each layer of work tabulated below:

S. No.	Description/Activity	Scope	Achieved as on 15.05.2023
01	Sub-grade Top	11.210 Km	2.067 Km



02	CTSB	11.210 Km	2.057 km
03	WMM	11.210 Km	2.000 km
04	DBM	11.210 Km	1.105 km
05	BC	11.210 Km	0.00 Km
06	Culverts	27 no's.	12 nos. up to deck slab and miscellaneous item remaining
07	Road Side drain	1.800 km	1.300 km
08	Minor Bridge	05 no's	02 nos. up to slab, 02 (Retaining wall completed & Crash Barrier in progress)
09	Breast Wall	520 m	520 m
10	Retaining Wall	1325m	557

23. Whereas, the Contractor's act is totally unethical and shows total breach to the Contract Agreement and has even not even upheld his own targets which were committed/promised during the review meetings. It is clearly evident that the EPC contractor has failed in his obligations and continues to be default in executing requisite work for achievement of scheduled project milestones. In spite of repeated instructions by the Authority during various meetings to expedite progress of work, the progress of the construction of project highways has remained extremely slow against the expected progress of work which are reflecting in the Monthly Progress Report (MPRs).

24. Whereas, as per Clause 4.4 of the contract agreement, till date the contractor has not been able to deploy sufficient skilled tradesman/personals in conformity with terms & condition of contract, due to which progress of work as well as planning of works get affected very much. Further, the contractor has failed in discharging its obligations in accordance with Good Industry Practice.

25. Whereas, more than 32 months have already been passed after declaration of Appointed Date and it can be seen that M/s A. K. Construction Company is unable to deploy sufficient manpower, material resources, qualified & experienced personnel, shows his failure to proceed with the work, manifests his intention to abandon the construction of project highway and commits default with provisions of contract agreement thereby leading to cost-overrun & time overrun for such a crucial and strategically important project in Tripura.

26. Whereas, from the above, it is evident that there has been a consistent failure on the part of the contractor in complying with the obligations of the contract agreement and the contractor has committed a breach on various fronts under the contract agreement, inter alia, non-achievement of required progress, resulting in Contractor's default under the following clauses of the EPC agreement:

- i. The Contractor has failed to achieve outstanding Project Milestones & extended Project Milestones in accordance with Schedule-J of contract agreement and continues to be in default for 45 days, thus in the default of the Contract as per Clause 23.1.i (c) and Clause 23.1(i)(f) of the Contract Agreement.



- ii. The Contractor has failed to mobilize required machinery & manpower as per the provisions of the Contract Agreement, the Contractor has shown total lack of ability to execute project and the physical progress achieved till date after passing of more than 1000 days from Appointed Date is merely 20.30%. Thus in the default of the Contract as per Clause 23.1(i)(d) and Clause 23.1(i) (e) of the Contract Agreement.
- iii. The Contractor has failed to fulfil the obligations stipulated in Contract Agreement, thus in the default of the Contract as per Clause 23.1(i) (p) and Clause 23.1(i)(q) of Contract Agreement.
- iv. The Contractor has not shown any sign of improvement in his performance in spite of numerous letters/notices, cure period notices, intention to termination notices issued from time to time by the Authority and Authority's Engineer.
- v. The Contractor has not followed Good Industry Practice which is inherent in Clause 4.1 of Contract Agreement.

27. Whereas, in view of the unsatisfactory reply of the contractor to the notice for intention to terminate issued by NHIDCL, above-mentioned facts and circumstances, non-exhaustive fundamental breach, it is emphasized that M/s A K Construction Company is not performing its obligations as stipulated in the Contract Agreement and showing casual approach, unprofessional behaviour towards implementation and is unwilling to complete the project as per the provisions of contract agreement and milestones leading to a material adverse effect on the project, the contractor's inadequate mobilization in terms of manpower, equipment and machineries on site and its lack of ability to expedite the progress in best working season demonstrate the intention best known to him and no interest towards achieving the progress of work in accordance with the provisions of Contract Agreement. Further, aforementioned facts itself constitutes the default on the part of the contractor under Article 23.1(i)(c), 23.1.(i)(d), 23.1(i)(e), 23.1(i)(f), 23.1(i)(p) & 23.1(i)(q) of the contract Agreement.

28. In light of the above facts, the Authority has left with no other option but to terminate the contract with M/s A K Construction Company forthwith in accordance with Clause 23.1 of the Contract Agreement with immediate effect.

29. Upon Termination of this Contract in accordance with the terms of Article 23, the provisions of Article 23 shall henceforth apply.

30. The Authority hereby reserves its right to recover the losses or damages and expenditures which shall be borne by the Authority on account of maintenance of the existing Project Highway or any other expenditure which the Authority will incur due to termination of the contract on contractor's default.

31. Upon Termination of this Agreement in accordance with the terms of this Article 23, the Contractor shall comply with and conform to the following:

- (a) deliver all relevant records, reports, Intellectual Property and other



licences pertaining to the Works, Maintenance, other design documents;

(b) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and

(c) vacate the Site within 15 (fifteen) days.

32. The contractor shall vacate the site within 15 days and handover all related documents and records to the Authority in accordance to Clause 23.4 of the Contract Agreement.

33. The EPC Contractor is hereby directed to restrain any person claiming through or under agreement from entering upon the site or any part of the project except for taking possession of materials, stores, construction plants with the prior permission of the Authority.

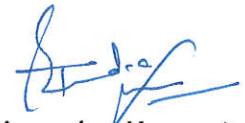
34. In conjunction with this Contract Termination, M/s A K Construction Company, shall not perform further services other than those reasonably, necessary to close out this contract.

35. The Authorized Signatory of the EPC Contractor is directed to meet the Executive Director (P), RO Agartala along with all the details pertaining to transfer or rights in accordance with Clause 23.7 of the Contract Agreement

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

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

Enclosure: As Stated



(Trivendra Kumar)

Executive Director (Tech)

Copy to:

1. PS to MD, NHIDCL
2. PS to Director(A&F)/Director (T-I)/Director(T-II) NHIDCL
3. ED(T/P)s, NHIDCL
4. GM(P), PMU Dharmangar, NHIDCL
5. GM(IT), NHIDCL HQ (to put the notice on the website)