

TERMINATION ORDER (WITHOUT PREJUDICE)

NHIDCL/ICBR/Ar.Pr./CivilWork/Doginala-Gau/189404-3975

Date: 28.08.2024

To

The Authorized signatory
M/s Indo Engineering Project Corporation
301, Arshi Enclave, Above Syndicate Bank
Manish Nagar, Somalwada
Nagpur-440015
Email: iepc@iepcindia.com

[Kind Attn.: Shri Sushil Patil, Authorized Signatory]

Sub: Construction of High-Altitude Hill Road from Doginala to Gau from KM 0+000 to KM 15+320 in Upper Subansiri District of the State of Arunachal Pradesh on EPC Mode- Termination Order as per Clause 23.1 of Contract Agreement-Reg.

Ref:

- i. HQ NHIDCL letter no. NHIDCL/Civil Work/A.P/Doginala to Gau/2020/2236 dated 21.12.2020.
- ii. Contract Agreement dated 19.02.2021.
- iii. RO Itanagar Letter No. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/962 Dated 03.03.2021. (Appointed date).
- iv. Supplementary Agreement dated 16.02.2022.
- v. Authority Engineer Letter No Bloom-Jindal-KMIPPL/NHIDCL/DG/105 dated 23.03.2022.
- vi. Authority Engineer Letter No Bloom-Jindal-KMIPPL/NHIDCL /120 dated 18.04.2022.
- vii. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/2622 dated 22.04.2022 (1st Cure Notice).
- viii. Authority Engineer Letter No Bloom-Jindal-KMIPPL/NHIDCL/DG/137 dated 09.05.2022.
- ix. PMU Basar letter no. NHIDCL/PMU-Basar/2022-23/ICBR/D-G/Corr/1048 dated 18.11.2022.

- x. RO-ITA letter no. NHIDCL/RO-ITA/07/MISC/2021-22/3984 dated 23.12.2022.
- xi. EPC Contractor letter no. NIL dated 20.12.2022.
- xii. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/4233 dated 06.02.2023. (Show Cause Notice).
- xiii. PMU-Basar letter no. NHIDCL/PMU-Basar/2022-23/MoM/1245 dated 23.02.2023 (Minutes of Meeting).
- xiv. PMU Basar letter no. NHIDCL/PMU-Basar/2022-23/MOM/1282 dated 15.03.2023. (Minutes of Meeting).
- xv. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/4698 dated 11.04.2023. (Show Cause Notice).
- xvi. Authority Engineer Letter No Bloom-Jindal-KMIPPL/NHIDCL//331 dated 26.05.2023.
- xvii. PMU-Ziro letter no. NHIDCL/PMU-ZIRO/2023-24/ICBR/D-G/6396 dated 03.06.2023. (Slow Progress Notice).
- xviii. RO-Itanagar letter no. NHIDCL/RO-ITA/02/GC-PMU/2021-22/5075 dated 08.06.2023. (Review Meeting & Action Taken Report).
- xix. PMU-ZIRO letter no. NHIDCL/PMU-ZIRO/2023-24/AE/ICBR/D-G/6451 dated 09.06.2023. (Instruction for Review Meeting & Action Taken Report).
- xx. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/6205 dated 06.07.2023. (Show Cause Notice-2).
- xxi. Authority's Engineer letter no. Bloom- Jindal- KMIPPL/NHIDCL/2-23-24/410 dated 25.09.2023.
- xxii. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/6619 dated 05.10.2023.
- xxiii. Your letter No. IEPC/NHIDCL/Doginala-Gau/2023 dated 19.10.2023
- xxiv. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/7170 dated 30.12.2023.
- xxv. Your letter No. IEPC/NHIDCL/Doginala/0123/2024 Dated. 16.02.2024.
- xxvi. Your letter No. IEPC/AE/Doginala-Gau/2024/0250 Dated. 03.01.2024.
- xxvii. Your letter No. IEPC/AE/Doginala-Gau/0124/2024 Dated. 13.04.2024.



xxviii. Project Review Meeting on dated 16.02.2024 to review the present status of subject project by MD, NHIDCL.

xxix. RO-Itanagar letter no. NHIDCL/RO-ITA/02/ICBR/D-G/2020-21/7488 dated 16.02.2024.

Sir,

Whereas, letter of Award (LOA) for the execution of work of “Construction of high-altitude hill road from Doginala to Gau from km 0+000 to km 15+320 in Upper Subansiri District of the state of Arunachal Pradesh on EPC Mode” (Project) was issued to M/s Indo Engineering Project Corporation (“referred as EPC Contractor” hereinafter) vide letter under ref. (i) above by National Highways & Infrastructure Development Corporation Limited (NHIDCL) (referred as “Authority” hereinafter).

2. Whereas, the Contract Agreement (referred as “CA” hereinafter) for executing the subject work was signed on 19.02.2021(ref-ii) at a Contract Price of Rs 121,97,72,500/- (Excluding GST) between the Authority and the EPC Contractor, and the Appointed Date was notified on 04.03.2021(ref-iii). As per the Contract provision, the scheduled completion date was fixed on 03.09.2022 (i.e 549 days).

3. Whereas, Forest Clearance (Stage-I) has been issued by the Department of Environment & Forest, Govt. of Arunachal Pradesh vide letter no. FOR.11-04/Cons/2018/5110-5113 dated 23.12.2021. In fulfilment of obligations as per clause 8.2(i) CA, the Authority has handed over the complete length of project i.e., 15.320 km (100%) of stretch free from all encumbrances through a Handover Memorandum duly signed between Authority and EPC Contractor on 02.02.2022 and working permission was granted to the EPC Contractor vide letter no. FOR.11-04/Cons/2018/3510-13 dated 9th Sept 2022.

4. Whereas, The Extension of Time (EOT) for the subject project was granted by Authority based on the recommendation of Authority Engineer’s (AE) due to delay in completion of Pre-Construction Activities viz. Land Acquisition and Forest Clearance and Supplementary Agreement was signed on 16.02.2022 between



Authority and EPC contractor (ref-iv) and Schedule completion date was extended from 03.09.2022 to 04.08.2023.

5. Whereas, the Project Milestones as per Schedule J of the Contract Agreement vis-à-vis actual achievement & status of the Milestones are as follows: -

Sl. No.	Project Milestone	Date of occurrence as per the CA	Date of occurrence as per the Supplementary Agreement dated 16.02.2022	Actual date of achievement
1	Project Milestone-I (10%)	11.09.2021	12.08.2022	06.08.2022
2	Project Milestone-II (35%)	28.10.2021	28.02.2022	Not Yet Achieved
3	Project Milestone-III (70%)	13.06.2022	14.05.2023	
4	Schedule Date of Completion	03.09.2022	04.08.2023	

6. **WHEREAS**, the “Scope of the project” has already been defined under Article 2 of CA and the EPC Contractor has acknowledged the same as per article 6 of the CA.

7. **Whereas**, as per CA Clause 4.1(i), the EPC contractor shall under take the survey, investigation, design, engineering, procurement, construction and maintenance of the Project Highway and observe, fulfil, comply with and perform its obligations set out under the Contract Agreement and moreover follow the Contract Agreement and the obligation thereon with full adherence, diligence and sincerity. However, no prior site investigation work was commenced prior to mobilization of Manpower, Machineries & Materials etc. on project site. More so, EPC contractor has been also directed by ED(P) during Monthly Review Meeting to establish camp-site at the earliest as per Schedule-C but till date no appropriate arrangement have been made at site for supervision and monitoring of the project.



8. **WHEREAS**, as per clause 10.1.(i)(c) of CA “Within 20(twenty) days of the appointed date, the contractor undertakes and perform all such acts, deeds and thing as may be necessary or required before commencement of Works under and in accordance with this agreement, the applicable Laws and Applicable permits.”. But the same has not been arranged by the EPC Contractor as per clause of CA.

9. **WHEREAS**, as per clause 10.1.(i)(d) of CA “Within 20(twenty) days of the appointed date, the contractor makes its own arrangements for quarrying of material needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.” But the same has not been arranged by the EPC Contractor.

10. **WHEREAS**, as per clause 10.1.(iii) (A) of CA “Within 30(thirty) days of the appointed date, the contractor shall submit to the Authority and the Authority’s Engineer a work programme (the “Programme) for organising and carrying out whole of the Works”. But EPC Contractor has failed to submit Work Programme as per CA.

11. **WHEREAS**, as per clause 10.1 (iv) of CA “the contractor shall compute, on the basis of the Drawings prepared in accordance with clause 10.2 (iv), and provide to the Authority’s Engineer, the length, area and numbers, as the case may be, in respect of the various items of the work specified in Schedule-H and comprising the Scope of the Project. But the same have not been provided by the EPC contractor.

12. **WHEREAS**, as per clause 10.2 (i) of CA “Design and drawing shall be developed in conformity with the specifications and standards set forth in Schedule-D.” The EPC contractor was to submit the Design and Drawings of the project Highway (including 82 nos. culverts) in accordance to contract clause no. 10.2 but the Plan & Profile and Structural Drawing of only one Culvert 2x2 was submitted by EPC contractor, which have also been approved by Authority’s Engineer. However, Survey Data, Structural Design for remaining Culverts, Lined



Drains, and other Structural Works has not been submitted by EPC contractor yet as per Clause 10.2 of CA.

13. **WHEREAS**, reference to PMU-Basar letter No. NHIDCL/PMU-BASAR/2021-22/D-G/AE/1239 dated 20.02.2023, EPC Contractor was directed to submit the Design & Drawing of Abutment and anchorage based and Pavement Design of approach road by 25.02.2023 but EPC Contractor failed to submit Design & Drawing for Abutments and Pavement Design as per Clause 10.2.(iv)(i)(b) of Contract Agreement which found gross negligence of the EPC Contractor towards the project.

14. **WHEREAS**, as per CA Clause 11.2(ii) of CA “the contractor shall, within 30 (thirty) days of the appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan”. But the same has not been complied by EPC contractor.

15. **WHEREAS**, as per CA Clause 11.2(iii) of CA “the contractor was to procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, materials, samples and qualified personnel as are necessary for examining and testing the project assets and workmanship in accordance with Quality Assurance Plan. But the same has not been complied by EPC contractor. It shows that, the EPC Contractor has no intent/ lack of interest towards the completion of such strategic important Project.

16. **Whereas**, the EPC Contractor has failed to submit the Methodology at least 15 days prior to commencement of the construction work, by giving details of equipment to be deployed, traffic management and measures for ensuring safety during Construction/Execution of project as per Clause 11.3 of CA.

17. **Whereas**, Project Facilities as per Schedule-C of CA has not been fully setup at site for proper monitoring and supervision of the project.

18. **Whereas**, EPC Contractor has failed to Mobilize adequate Manpower and Machinery for smooth execution of the instant project.



19. **Whereas**, vide (ref- v, vi and viii), the Authority's Engineer has directed EPC contractor to deploy Manpower and Machinery but the Contractor has failed to deploy adequate Manpower and Machinery (resources) at project site, which is resulted in considerable delay in progress of works. It is noteworthy to mention that Contractor has not started any other activity except Earthwork/Formation cutting in the instant project.

20. **WHEREAS**, no activities are being carried out or planned by EPC Contractor at project site. At present, the site is completely abandoned, no project Managers or other Technical Staff available. Also, no resources are mobilized to carry out any type of works at project site. Thus, contractor has failed to meet the Bonafide Contractual obligations. Present status of manpower and machinery is mentioned below: -

Manpower

Sr. No	Designation	Required as per Scope	No. of staff available at site
1	Project Manager	1	0
2	Dy. Project Manager	1	0
3	Planning Engineer	1	0
4	Highway Engineer	2	1
5	Structure Engineer	2	0
6	Sr. Quantity Surveyor	1	00
7	Sr. Safety Engineer	1	0
8	Quality cum Material Engineer	1	0
9	Sr. Mechanical Engineer	1	0
10	Lab Technician	2	1
11	Surveyor	2	1
12	Site Engineer	4	00
13	Other Civil/Mechanical Staff	6	01
14	Office staff	4	03
15	Driver/operators	45	03
16	Labour	140	0
17	Other staff (Cook/Chowkidar)	08	04
Total		222	14

Machineries

Sr. No	Equipment name	Required as per Scope	Available at Site
1	Crusher	1	0
2	Hot Mix Plant	1	0
3	WMM Plant	1	0
4	Concrete Batching Plant	1	0
5	Excavators	10	03
6	Tipper	20	02
7	Motor Grader	1	0
8	Soil Compactor	2	00
9	Tandem Roller	1	0
10	Paver	1	0
11	Rock Breaker	2	01
12	Water Tanker	1	0
13	Diesel Tanker	1	01
14	Bolero Camper	3	01
15	Transportation LMV	2	01
16	Backhoe Loader	3	00
17	Trailer	1	01
18	RoC	2	01
19	DG Set	2	02
20	Compressor	2	01
21	Bitumen Sprayer	0	0

21. **WHEREAS**, the EPC contractor was to submit Evidence of Insurance Cover in accordance with Article 20.3.(i) & Schedule - P of the contract agreement within 10 days of Appointed date. Beside this the insurance policy i.e. "Employees Compensation Liability policy" has been expired on 23.04.2024 and updated insurance policy is yet to be provided by contractor. Status of insurance as per Article-20 (Schedule-P) are mentioned below: -

Sr. No	Insurance Cover	Policy Number	Contract Agreement Provisions	Amount in Rs. (Crore)	Policy Valid up to	Associated Agency
1.	Insurance for Works	53010944210300 000014	Clause 20.1.1,20.1.3 & 1.1&1.2 of Schedule 'P'	121.97	03/02/2025	The New India Assurance Co. Ltd



2.	Third Party Liability	53010944210300 000014	Clause 3.1 and 3.2 of Schedule 'P'	1.0	03/02/2025	The New India Assurance Co. Ltd
3.	Insurance for Contractor's Defect Liability	-	Clause 2 of Schedule "P"	Not Specified		
4.	Employees Compensati on Liability policy	53010936230100 000002	Clause 20.9	0.76	23/04/2024	The New India Assurance Co. Ltd
5.	Professional Indemnity policy	53010936210200 000002	Clause 20.1.6	3.65	03/08/2024	The New India Assurance Co. Ltd

22. **WHEREAS**, it has become evidently clear that the contractor has failed to comply with the conditions set forth in the CA and the directions given by the Authority regularly and only resorted to false assurances as the civil works are not progressing at site even after the start of working season, despite the knowledge that the North Eastern region is having limited working seasons.

23. **WHEREAS**, Contractor has failed to achieve the targeted progress as per Work Programme of Schedule-J of Contract Agreement. The physical and financial progress achieved is tabulated below: -

% Progress	Cumulative progress up to December 2022	Mar-23	Jun-23	Sep-23	Dec-23	March- 24	Total upto July-24
Physical Progress	17.81%	0.00%	0.00%	0.00%	0.00%	0.00%	17.81%
Financial Progress	17.53%	0.00%	0.00%	0.00%	0.00%	0.00%	17.53%

24. **WHEREAS**, from the above table, it is evident that the EPC Contractor has not executed any work since last 19 months toward the completion of work within stipulated time as per Schedule-J of CA and abandoned the site completely. After

Achievement of Milestone-I, the EPC Contractor has failed to achieve Milestone-II on or before the extended date i.e., **28.02.2022**. Even after lapse of more than 02 Year, EPC Contractor could not achieve the Milestone-II at present which is under default of Clause 23.1(i)(c) and 23.1(i)(f) of Contract Agreement.

25. **WHEREAS**, Authority has regularly intimated EPC Contractor regarding Slow Progress of work and non-achieving of Milestone-II and directed to expedite the progress of work as per Clause 11.14 of CA but the EPC Contractor has not taken any proactive measures to address the project shortfall at the site, nor have they accelerated the project's progress. EPC Contractor could not achieve Milestone-II and Milestone-III as per extended date in spite of the commitment made during various Review Meeting held by the Authority/Authority's Engineer. Thus, the EPC Contractor is under default (**The Contractor's Default**) under Clause 23.1(i) (c) and 23.1 (i)(q) of the CA for which action is desirable as per Clause 23.1 (ii) of CA.

26. **WHEREAS**, looking the previous performances and also based on resources deployed, it is clear that the EPC Contractor has no interest in the achievement of Milestones within stipulated time as per Schedule 'J' of CA and Supplementary Agreement executed thereof due to initial delay in Land Acquisition and Forest Clearance.

27. **WHEREAS**, the details of work carried out by the EPC Contractor and the Balance work against the Scope of Project as mentioned in Schedule-B of Contract Agreement is tabulated below, which explicitly stated that EPC contractor under **Contractor's default** as per Clause 23.1 (c) and 23.1 (e) of CA: -

Sr. No.	Work Description	Units	Scope	Status as on Date	Balance Work	Remarks
1	Formation Cutting	Km	15.320	8.99	6.33	No works carried out by the EPC Contractor except the Formation
2	Sub-Grade	Km	15.320	0	15.320	
3	GSB	Km	15.320	0	15.320	
4	WMM	Km	15.320	0	15.320	
5	DBM	Km	15.320	0	15.320	
6	BC	Km	15.320		15.320	
7	Culverts	No's	82	0	82	

8	Lined Drain	Km	15.160	0	15.160	Cutting.
9	Breast Walls	m	3650	0	3650	
10	Retaining Walls	m	3850	0	3850	
11	Gabion Wall	Cum	18200	0	18200	
12	Parapet Wall	Rm	2300	0	2300	
13	Rock-fall protection work	Rm	1050	0	1050	
14	Bus Shelter	no's	2	0	2	
15	Hydro Seeding and Mulching	Sqm	40000	0	40000	
16	Seeding and Mulching USING Geo Textile	Sqm	14000	0	14000	
17	Road Signs, marking, Km stone, Safety Barrier	Km	15.320	0	15.320	
18	Crash Barrier	M	4600	0	4600	
19	Road Marking and studs	Km	15.320	0	15.320	
20	Project facilities including Telecommunication system	No's	1	0	1	
21	Project Facilities for Authority	No's	1	0	1	

28. **WHEREAS**, it has become evidently clear that the contractor has failed to comply with the conditions set forth in the CA and the directions given by the Authority regularly and only resorted to false assurances as the civil works are not progressing at site even after the start of working season, in spite the contractor is very well aware that North Eastern region is having limited working seasons.

29. **WHEREAS**, the EPC contractor does not seem to be in a position to execute the contract within the provision of the CA and continue to be in default of the obligations as brought out in the various letters mentioned above, leading to major material adverse effect on the contract.

30. **WHEREAS**, EPC Contractor has not followed the proper channel to submit any correspondence relating to the subject work. This shows poor Management of the EPC Contractor for proper coordination with the Authority Engineer and Authority. This shows the complete inefficiency of the Management of the EPC Contractor to handle such critical/ strategically important project in Hilly Areas.

31. **WHEREAS**, EPC Contractor's above acts and Omission has resulted in:

- i. Immense Public Suffering because the said project on which contractor is working and which has been delaying, is crucial and has strategic importance.
- ii. The Authority is losing goodwill in the eyes of the people of Arunachal Pradesh.
- iii. The Authority is losing reputation and credibility in the eyes of its stakeholder.

32. **WHEREAS**, by sighted continuous defaults made by the EPC Contractor, RO-Itanagar vide (ref-vii) issued 1st Cure Notice on 22.04.2022 to EPC contractor for not adhering the Contractual Provisions and very poor performance of work in the last 1year or so. EPC Contractor as per Article 23 of CA and notified the damages as per Contract clause 10.3 (ii) of CA reiterated as "The Contractor shall construct the Project Highway in accordance with the Project Completion schedule set forth in Schedule-J. In the event that the Contractor fails to achieve any Project Milestone or the scheduled Completion Date within a period of 30 days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reason solely attributable to the Authority, it shall pay damages to the Authority of a sum calculated at the rate of 0.05% (Zero point zero five percent) of the contract price for delay of each day reckoned from the date specified in Schedule-J and until such Project Milestone is achieved or work is completed..." The EPC Contractor was asked to Cure the Defaults within 60 (sixty) days. However, no action was taken by the EPC Contractor to cure the defects/ defaults during such specified period.

33. **WHEREAS**, vide letter at (ref-ix), PMU Basar directed the EPC Contractor to visit the project site on 22.11.2022 with their Authorized Representative and other Stake Holders to resolve the issues with the long absence of the Project Manager at site. EPC Contractor has failed to comply with the above directions issued by the Authority. It is noticed that there are no Technical Staffs and Labour available at site since September 2022. Thus, Contractor is under continuous default (The Contractor's Default) as per Clause 23.1(i) (d) of CA.



34. **WHEREAS**, vide letter at (ref-x), ED(P), RO-Itanagar directed the EPC Contractor and Authority Engineer to attend the Review Meeting held on 06th and 7th January 2023 (Physically) at Dibrugarh. PMU Basar had communicated to the EPC Contractor vide letter no. NHIDCL/PMU-BASAR/2022-23/Misc./1132 dated 30.12.2023. However, in spite of the verbal and written direction, No Authorized Representative of EPC Contractor attended the said meeting on scheduled date which is against the Good Industry Practice and not tolerable.

35. **WHEREAS**, vide (ref-xii), RO-Itanagar has issued a Show Cause Notice to EPC contractor on 06.02.2023 without prejudice to any other right/connection or remedy available to the Authority under the CA and/or applicable law in order to correct/speed up of work failing which appropriate penal provision as per Article 23 or any other relevant clause of CA.

36. **WHEREAS**, vide letter at (ref-xiii) a Meeting was held to overcome the Slow Progress of work and mobilization of resources but no progress was reported.

37. **WHEREAS**, again, vide (ref-xiv) a Minutes was held to ensure that the commitments made in the previous Meeting was compiled by the EPC Contractor. However, all the directions of the Authority dimmed by the EPC Contractor and no progress was made even after written/verbal instruction issued by the Authority. It appears that the EPC Contractor has decided to abandon the project site without having any concrete ground. Thus, EPC Contractor has been found under default as per Clause 23.1.(i) (q) of Contract Agreement.

38. **WHERAS**, upon the failure of the above compliances, orders and several instructions issued by Authority, EPC contractor has not taken the Construction/execution work seriously and for that reason RO-Itanagar vide letter at (ref-xv) above had issued Show Cause Notice to EPC contractor and directed to achieve at least 3% progress per month as per work plan, but after elapsing 1 year, no progress was observed by the Authority.



39. **WHEREAS**, further, the Authority's Engineer vide letter at (ref-xvi) has also recommended to issue Show Cause Notice for poor progress of work, absence of Technical Staff at site and failure in complying with the Authority's instructions to expedite and deployment of adequate resources at project site and vide letter at (ref-xvii), PMU-Ziro issued a Slow Progress Notice without Prejudice to EPC Contractor for not showing any intent towards progress of the project.

40. **WHEREAS**, vide (ref-xviii) RO-Itanagar directed the EPC Contractor to achieve 4-5% progress within the month, similarly, PMU-Ziro vide (ref-xix) instructed EPC Contractor to at least achieve 4-5% upto 15.07.2023, if EPC Contractor fails to achieve the desired progress within the specified period of the work, the Authority will have no option but to issue a Termination Order.

41. **WHEREAS**, the EPC Contractor should have taken all such measures as was necessary to expedite progress so as to comply with the timely completion of the Project Milestones stipulated in Supplementary Agreement. EPC Contractor had always been intimated from time to time by Authority's Engineer and Authority regarding the slow progress of work, but EPC Contractor had not taken a single step to catch up the shortfall at site. Thus, EPC contractor has not complied with the direction of Authority which is under defaults of Article-23 Clause 23.1.(i). (c) of Contract Agreement.

42. **WHEREAS**, after several Slow Progress Notices, Cure Notices, Show Cause Notice, vide (ref-xx), RO-Itanagar has issued 2nd Show Cause Notice dated 06.07.2023 to EPC contractor without prejudice for subletting the Contract without prior approval of Authority and directed to explain/reply in writing within 14 days, but EPC contractor's unfortunate reply without material substances has tarnished the image of Authority. However, later EPC contractor reinstated the Power of Attorney vide letter no. IEPC/GM/TPA/Doginala-Gau/00109/2023 dated 09/06/2023. Hence contractor has defaulted (The Contractor's Default) under clause 23.1.(i) (q) of the Contract Agreement.



43. **WHEREAS**, vide reference (xxii), an Intention to Termination Notice issued on 05.10.2023 as per Clause 23.1 (ii) of CA was issued by the Authority with view to Terminate the Instant CA. However, based on recommendations of AE & GM(P), three months' time was given to Cure your defaults. However, EPC contractor had missed this opportunity too and continued to be in Default (The Contractor's Default).

44. **WHEREAS**, authority at several occasions had provided enough time to execute and complete the work but it seems that EPC contractor has taken the project as granted. Situation is becoming worse with every passing day and requires immediate action as per relevant Clauses of the Contract Agreement.

45. **WHEREAS**, it was already notified to contractor that the subject project is a Strategic Defence Project and timely completion of which is a National Strategic Defence requirement. If something untoward incidents happened, EPC contractor will be charged under National Security Act. The EPC Contractor is well aware that above said project is very important for Defence movement and is being monitored by the Ministry of Home Affairs (MHA) regularly. Hence, due diligence is very essential to complete the work in time which contractor has failed to comply with.

46. **WHEREAS**, the contractor has breached the provisions of CA, inter-alia with the following defaults in terms of the clause 23.1.(i) of Contract Agreement:

- a. The EPC Contractor has failed to achieve project milestones & scheduled completion and continues to do so, thus in the default of the contract as per clause 23.1.i (c) and 23.1.i(f) of the EPC contract agreement.
- b. The EPC Contractor has failed to mobilize required machinery & manpower as per provision of the CA, failed to proceed with work as per Clause 10.1 of CA without reflecting the same in work programme, also failed to maintain the existing road in traffic worthy condition, thus in the default of the contract as per clause 23.1.i(e) of CA.



- c. The EPC Contractor has shown total lack of ability to execute the projects by abandoning the construction and maintenance of the Project Highway without the prior written consent of the Authority, thus in the default of the contract as per clause 23.1.i(d) of the EPC contract agreement.
- d. The EPC contractor has failed to abide by the provisions of the CA and has failed to fulfil obligations of the Contractor specified in CA, thus in the default of the contract as per clause 23.1.i (p) of the EPC CA.
- e. The EPC contractor has not shown any sign of improvement in his performance in spite of numbers letters/notices as well as review meetings with the Authority.
- f. The EPC contractor has not followed the Good Industry Practice which is inherent in the CA refer clause 4.1.(iii)of the EPC CA.

47. **WHEREAS**, authority issued 'Intention to Termination' Notice as per Clause 23.1 (ii) of Contract Agreement to the EPC Contractor on 05.10.2023 (at xxii) without prejudice to any other rights/connection or remedy available to the Authority under the CA and/or applicable law in order to correct /speed up this work failing which appropriate penal provision as per Article 23 or any other relevant clause of CA would be invoked.

48. **WHEREAS**, the EPC contractor vide letter dated 19.10.2023 cited at ref. (xxiii) submitted their reply to the Intention to Termination Notice, which ignored the issues raised by NHIDCL and have committed to achieve the milestone-II on or before the 11.03.2024 whereas the EPC contractor had achieved nil progress in 04 months (from the date of submission of reply) and till date no progress of work on the site. The blatant ignorance of the EPC contractor on the defaults mentioned in the Intention to Termination Notice and failure of contractor to fully mobilize & expedite work progress at site despite support from NHIDCL and Authority's Engineer, once again shows that the EPC contractor has no intention to execute the project work..



49. **WHEREAS**, NHIDCL wanted to extend all possible support & efforts to the EPC contractor in the interest of the project work, hence NHIDCL had granted several opportunities to the EPC contractor to achieve the progress of work as per the CA.

50. **WHEREAS**, after passing of about more than 39 months since the date of commencement of work, the EPC contractor could achieve only 17.81% physical progress and 17.53% financial progress at present. Give the current pace of progress, it appears unlikely that the contractor will be able to complete the project, even with an extension of time. Clearly, in the absence of satisfactory performance of the EPC Contractor and lack of proper construction planning, deployment of machinery & manpower and reluctant behavior of EPC Contractor, all the Project Milestones are not achieved even within the extended dates.

51. **WHEREAS**, Authority vide letter no.3849 dated 05.06.2024 & 3866 dated 14.06.2024 has informed EPC contractor to come at HQ, NHIDCL for resolving the various issues but EPC contractor has not shown up to address the issues. It shows that EPC contractor is not interested to do the work further.

52. **WHEREAS**, in the light of aforesaid facts and circumstances, non-exhaustive fundamental breach, in view of the EPC contractor's persistent & sustained gross default in fulfilling contractual obligations, leading to a material adverse effect on the project, the Authority has now after giving sufficient time to cure the defaults and extending all possible support to the contractor and after observing no improvement in the non-professional attitude of the EPC contractor, the Authority has left with no other option but to terminate the contract with EPC contractor forthwith in accordance with clause 23.1 of the contract agreement with immediate effect. The contract is hereby terminated with immediate effect.

53. Upon termination of this Agreement in accordance with the terms of Article 23, the provisions of Article 23 shall henceforth apply.




54. 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 EPC contractor's default.

55. 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 and equipment, which do not vest in the Authority as per the CA with the prior permission of the Authority.

56. In conjunction with this contract termination, EPC contractor shall not perform further services other than those reasonably, necessary to close out this contract.

57. This Termination order is issued without prejudice to any other right or remedy available with the Authority under the CA and/or applicable law.

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



(Trivendra Kumar)
Executive Director (T)

Encl.: As stated above.

Copy to: -

- 1) PS to MD, NHIDCL.
- 2) PS to Dir(A&F)/ Dir (T-1) / Dir(T-2), NHIDCL
- 3) The Executive Director (T/P), NHIDCL: -
- 4) The Executive Director (P), NHIDCL, RO-Itanagar:- for kind information please.
- 5) The GM (P), PMU-Ziro, NHIDCL- for kind information please.
- 6) The Authority's Engineer- for kind information please.
- 7) GM(IT), NHIDCL, HQ