



NHIDCL/Assam/S-D/P-1/New/2022/206856/3386

Date: 24.06.2024

**TERMINATION NOTICE
(WITHOUT PREJUDICE)**

To,

The Authorized Signatory,

M/s Simplex Infrastructures Limited,

Simplex House, 27, Shakespeare Sarani, Kolkata 700017

Email id: c3410@simplexinfra.com, kaustab.chakaraborty@simplexinfra.com,

Subject: Widening / Improvement to 4 (Four) Lane with Paved Shoulder configuration of existing single lane road from Srirampur (near Bhairiguri Village) to Kachukhana Harichara Paglagaunj (Package-I) of Srirampur - Dhubri Section of NH-127B from existing Km 0.000 to Km 28.050 (Design Km 0.000 to Km 27.650), (Design Length=27.650 Km) on EPC Mode in the State of Assam under JICA - ODA loan assistance: **Termination of Contract under Clause 23.1(ii) of the Contract Agreement-Reg.**

Ref: (i) HQ, NHIDCL LOA no. NHIDCL/Assam/S-D/P-1/New/2022/206856/1838 dated 12.09.2022.

(ii) Contract Agreement signed on 21.11.2022.

(iii) RO-Guwahati letter no. RO/DUB/S-D/Pkg-I/Simplex/Corres/2/11597 dated 13.02.2023.

(iv) PMU Dhubri letter no. NHIDCL/PMU-Dhubri/S-D/NH-127B/New Pkg-I/EPC/2022-23/Vol-1/2593 dated 13.02.2023.

(v) RO-Guwahati letter no. RO/DUB/S-D/Pkg-I/Simplex/Corres/2/13210 dated 27.09.2023.

(vi) PMU Dhubri letter no. NHIDCL/PMU-Dhubri/S-D/NH-127B/New Pkg-I/EPC/2022-23/Vol-1/3285 dated 19.12.2023.

(vii) HQ, NHIDCL letter no. RO/NE/P&IL/22/Part/231664/2900 dated 26.12.2023.

(viii) RO-Guwahati letter no. RO/DUB/S-D/Pkg-I/Simplex/Corres/2/13956 dated 26.12.2023.

(ix) PMU Dhubri letter no. NHIDCL/PMU-Dhubri/S-D/NH-127B/New Pkg-I/EPC/2022-23/Vol-1/3305 dated 29.12.2023.

(x) Your letter no. 012/SIL/C3410/NH-127B/NHIDCL/2023-24/VOL-I/00075 dated 30.12.2023.

(xi) PMU Dhubri letter no. NHIDCL/PMU-Dhubri/S-D/NH-127B/New Pkg-I/EPC/2022-23/Vol-1/3313 dated 05.01.2024.

(xii) Your letter no. 012/SIL/C3410/NH-127B/NHIDCL/2023-24/VOL-I/00081 dated 09.01.2024. (Received on 11.01.2024 through email)

(xiii) Your letter no. 012/PC/NHIDCL/Dhuburi/001/VOL-I/115650 dated 09.01.2024.

[Handwritten Signature]
24/06/24

(xiv) RO-Guwahati letter no. RO/DUB/S-D/Pkg-I/Simplex/Corres/2/14044 dated 10.01.2024.

(xv) PMU Dhubri letter no. NHIDCL/PMU-Dhubri/S-D/NH-127B/New Pkg-I/EPC/2022-23/Vol-1/3330 dated 16.01.2024.

Sir,

WHEREAS, Letter of Award (LOA) for the work of *“Widening / Improvement to 4 (Four) Lane with Paved Shoulder configuration of existing single lane road from Srirampur (near Bhairiguri Village) to KachukhanaHaricharaPaglagaunj (Package-I) of Srirampur - Dhubri Section of NH-127B from existing Km 0.000 to Km 28.050 (Design Km 0.000 to Km 27.650), (Design Length=27.650 Km) on EPC Mode in the State of Assam under JICA - ODA loan assistance”* through an Engineering, Procurement and Construction (EPC) Contract” (hereinafter referred as “Project”) was issued to M/s Simplex Infrastructures Limited (hereinafter referred as the “EPC Contractor”) on 12.09.2022 by National Highways Infrastructure & Development Corporation Limited (NHIDCL) (hereinafter referred as the “Authority”).

2. WHEREAS, the Contract Agreement was signed between M/s Simplex Infrastructures Limited (Contractor) and the National Highways Infrastructure & Development Corporation Limited (NHIDCL) (Authority) on 21.11.2022 at the Contract Price of Rs.297,28,16,000.00/- and subsequently Appointed Date was declared by the Competent Authority w.e.f. 15.02.2023 and the EPC Contractor was obliged to complete the work within 730 (Seven Hundred and Thirty) days from the Appointed date i.e., on or before 14.02.2025.

3. WHEREAS, as per Clause 8.2 of Article 8 of the Contract Agreement, the Joint Memorandum regarding inventory of site was prepared along with EPC Contractor on 08.02.2023, which was signed on 09.02.2023. As per the Joint Memorandum, total of 90.01% (24.888 Km), hindrance free land was handed over to the Contractor. By the revised Joint Memorandum-I dated 30.08.2023; a total 95.858% (26.505Km) of hindrance free land was handed over to the Contractor.

4. WHEREAS, the original date of Milestone-I, Milestone-II, Milestone-III and Milestone-IV according to Schedule-J of Contract Agreement and the dates of achievement of Milestones are as follows:

Milestone	% Achievement	Appointed date	Milestone Date as per Contract	Achievement date
Milestone-I	10%	15.02.2023	29.10.2023	Not achieved till date.
Milestone-II	35%	15.02.2023	28.04.2024	-
Milestone-III	70%	15.02.2023	28.10.2024	-
Milestone-IV	100%	15.02.2023	14.02.2025	-

5. WHEREAS, as per Article 4.1 of the Contract Agreement, the Contractor shall undertake survey, investigation, design, engineering, procurement, construction and


24/06/24

observe, fulfill, comply with and perform its obligations set out under the Contract Agreement.

6. **AND WHEREAS**, as per Article 10.3 of the Contract Agreement, the construction of the project was to be completed in all aspects within 730 Days from the Appointed Date. In the instant case, the Appointed Date was mutually agreed as 15.02.2023, meaning thereby that the EPC Contractor was obliged to complete the construction by 14.02.2025. However, in complete disregard to the aforesaid stipulation, the Contractor had failed to undertake the construction work at the requisite pace, inter alia, due to inadequate deployment of machinery, plant, material, and manpower for the reasons solely attributable to the EPC Contractor. However, to say the least, the progress of work has been dismal since start of the Project and the contractor has been able to achieve 0.00% financial progress up to 23.01.2024, against desired progress of 36.49% as per the Baseline Work Program. As per the Contract Agreement, the Milestone-I (10% Financial Progress) was due on 29.10.2023, but the EPC Contractor has failed to achieve the Milestone-I, contravening to clause 10.3. (i) & (ii) of EPC Contract Agreement which mandates that 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 Schedule-J.

7. **WHEREAS**, the EPC Contractor has failed to achieve the Work Programme submitted by it, the table below clearly indicates the poor performance of the EPC Contractor :-

Month	Target % progress	% achievement	Target % Cumulative Progress	% Cumulative Achievement
Feb-23	0.02	0	0.02	0.00
March-23	0.10	0	0.12	0.00
April-23	1.41	1.87	1.54	1.87
May-23	3.34	0.94	4.88	2.81
June-23	1.43	0.46	6.31	3.27
July-23	1.90	0.06	8.21	3.33
August-23	1.90	0.02	10.11	3.35
September-23	2.93	0.00	13.04	3.35
October-23	5.48	0.00	18.52	3.35
November-23	6.33	0.43	24.85	3.78
December-23	6.25	0.22	31.10	4.00
January-24	7.26	0.33	38.36	4.33
Feb-24	7.87	0.60	46.24	4.93
March-24	9.55	-	55.79	-
April-24	8.68	-	64.46	-
May-24	7.58	-	72.04	-
June-24	3.15	-	75.19	-
July-24	2.55	-	77.74	-
August-24	2.45	-	80.19	-
September-24	2.54	-	82.73	-
October-24	4.71	-	87.44	-
November-24	5.24	-	92.68	-

Dr
24/06/2024

December-24	4.21	-	96.89	-
January-25	2.44	-	99.33	-
Feb-25	0.67	-	100.00	-

8. **WHEREAS**, the EPC Contractor has never evinced his intention to take up the road/structural work, which can be demonstrated from the following:

	Item	Scope	Completed as on 22.01.2024
Road works (4-Lane)	Sub Grade	27.086 Km	1.135 Km
	GSB	27.086 Km	0.375 Km
	WMM	27.086 Km	0.000 Km
	DBM	27.250 Km	0.000 Km
	BC	27.250 Km	0.000 Km
	Service road	2.112 Km	0.000 Km
Culvert and other works	Drain	11.494 Km	0.978 Km
	Culverts	80 nos.	0 nos.
	River Protection	1.750 Km	0.000 Km
	Stone Pitching	3.901 Km	0.000 Km
ROB	Foundation	288 Rm	0 Rm
	Sub-structure	288 Rm	0 Rm
	Super-structure	288 Rm	0 Rm
Minor Bridge	Foundation	112 Rm	0 Rm
	Sub-structure	112 Rm	0 Rm
	Super-structure	112 Rm	0 Rm

During various review meetings dated 16.11.2023 and 21.12.2023 held under the chairmanship of MD NHIDCL, the delay in commencing the road works and structural works were highlighted, however, the EPC Contractor has failed to start any activity in ROB/Minor bridge portion or Road works portion since the appointed date.

9. **WHEREAS**, the mobilization of resources at site has never been found commensurate to the work to be undertaken in the encumbrance free stretch, made available to the EPC Contractor. The EPC Contractor has never taken note of the instruction of Authority and failed to achieve the progress as per the Work Program submitted by the Contractor even after availability of sufficient encumbrance free stretch. Further, EPC Contractor has not submitted any Revised Work Program demonstrating their efforts to make up for lost time on their end. Thus, violating Article 4 Clause 4.1(xi) of the Contract Agreement.

10. **WHEREAS**, the EPC Contractor has been continuously failing to meet the monthly progress commitments due to their poor planning, failure in procuring/arranging construction materials, failure in proper deployment of manpower, plant & machinery and lost precious working time. The EPC Contractor has not shown any intent to undertake the construction work at site and has failed to deploy requisite resources to meet the desired progress. This clearly establishes the lackadaisical and casual approach of the EPC Contractor in executing the project and would categorically indicate that the EPC Contractor was at all material times pursuing a different agenda and was not sincere or serious about project maintenance & completion of a project


24/06/24

that will provide connectivity to the prestigious National importance Dhubri - Phulbari Bridge Project which is being directly monitored by the PMO.

11. **WHEREAS**, the Contractor has failed in fulfilling their obligations under Clause 9.2 of the Contract Agreement and did not carry out the timely shifting of electrical & PHE utilities without any valid reason.

12. **WHEREAS**, the EPC Contractor failed to repair and maintain the existing single-lane of project highway in accordance with the provision of Clause 10.4 of Contract Agreement despite repeated reminders/ directions from the Authority, thereby tarnishing the image of NHIDCL among the local public, the stakeholders as well as the members of the DRSC committee. Consequently, a SHOW CAUSE notice was issued on 19.12.2023 regarding maintenance of road and subsequently as per Cl. 22.1 of EPC CA Notice for Suspension of Maintenance of the Road was issued on 29.12.2023. The tender for maintenance of road was invited at the Risk and cost of the EPC Contractor.

13. **WHEREAS**, on account of various tangible defaults of the EPC Contractor, the Authority had issued the Cure Notice vide letter dated 27.09.2023 under the provision of Clause 23.1(i) of the Contract Agreement to cure the defaults within 60 Days from the issuance of the Cure Notice. However EPC Contractor failed to cure their defaults during the aforesaid period. The Physical progress at the time of issuance of Cure Notice was 3.35% and as per the provisionally approved revised design and drawings, the recalculated physical progress as on 27.09.2023 was 2.95%.

14. **WHEREAS**, No representation/explanation was received from the EPC Contractor after the issuance of Cure Notice.

15. **WHEREAS**, all the earlier letters/correspondences/notices issued by the Authority to the EPC Contractor for improving its performance may be read as part and parcel of this notice.

16. **WHEREAS**, the Intention to Termination Notice was served to the EPC Contractor on 26.12.2023 in accordance with Clause 23.1(ii) of the Contract Agreement listing all the grounds of the Intention to Termination Notice due to inadequate mobilization in terms of manpower, equipment & machineries on site and Contractor's lack of ability to achieve the progress in working season. Vide Intention to Termination Notice dated 26.12.2023, a 15 (fifteen) Days time period was granted from the date of issue of this Notice, else action as per provision of the Contract Agreement was to be taken.

17. **WHEREAS**, the EPC Contractor replied to the Intention to Termination Notice vide letter dated 09.01.2024. In this regard, PMU-Dhubri, NHIDCL had conducted a site visit on 13.01.2024 along with the Project Manager of EPC Contractor to examine the representation/explanation of EPC Contractor. In this regard, the observations of NHIDCL are herein below:


24/06/24

Sl. No.	Contractor's submission	Observations of NHIDCL
i.	It is to intimate your kind office that we have already invested sufficient fund in procurement/arrangement of required materials and deploying resources in phase wise for acceleration of prioritized works at site; as demarcated by the site team so as to achieve the scheduled milestone targets at earliest.	A site visit was conducted by GM (P) on 13.01.2024 along with Project Manager of EPC Contractor, wherein it was observed that there was insufficient machinery and manpower at site (Most of the machinery was taken from the adjacent project of NHAI). The machineries that were present at site were sitting idle and not performing any works due to funding issues.
ii.	<p>Equipped with aforementioned fund and resources at site, we have targeted to complete a number of pavement layers along with other activities in tandem as below:</p> <p>a) 1.5 Km (2-lane) of subgrade work is already completed and further 3.6 Km (2-lane) of subgrade work will be completed within 10 days.</p> <p>b) Accordingly, 4.32 Km (2-lane) of GSB work will be completed within 10 days.</p> <p>c) 800 Rm of RCC drain work is already completed and further 500 Rm will be completed within 10 days.</p> <p>d) 687 Sqm of RE panel casting is already completed and further 300 Sqm will be done within 10 days.</p> <p>e) In subsequent manner, WMM will be started immediately after completion of a sufficient stretch of GSB work. The necessary efforts in this regard for arrangements of the said work are started.</p>	<p>As per site visit on 13.01.2024, the following quantities of work were observed:</p> <p>i. 2.02 Km (in 2-lane) sub-grade work completed.</p> <p>ii. 0.520 Km (in 2-lane) GSB work completed.</p> <p>iii. 890 Rm RCC drain work completed.</p> <p>iv. 915 sqm (244 nos.) RE panel casting completed.</p> <p>v. No WMM work planned at site. Contractor submitted Conventional Pavement design on 02.01.2024. The same was returned for re-submission vide PMU Dhubri letter no. 3328 dated 12.01.2024.</p> <p>The EPC Contractor has violated Article 4 of CA.</p>
iii.	<p>In addition to above, vide our undertaking dated: 09.01.2024, cited u/r-2 above, we have already intimated the office of GM (P), PMU-Dhubri on phase wise work of EPC Contractor towards maintenance of existing road and installation of road safety signages at project site by providing site photographs along with relevant location details.</p> <p>We further apprise your kind office that the progressive efforts of EPC Contractor are on for maintenance of existing road during construction period and to ensure proper road safety measures at project site and the same will be again intimated by us at periodic intervals with sizeable development.</p> <p>In additional to above, we undertake that the above said continuous/routine process (i.e. road maintenance and road safety measures at site) will be performed by us in the true spirit of contract provisions and as per the technical specifications.</p>	<p>A show cause notice for failure in case of road safety measures was issued to the Contractor vide PMU Dhubri letter no. 3285 dated 19.12.2023 and instructed the Contractor to submit a reply within 7 days of issue of the notice. Subsequently, due to absence of any explanation from the Contractor's end, PMU Dhubri issued a suspension notice as per Cl. 22.1 of EPC CA on default of failure in case of maintaining the road safety measures and maintenance of road vide letter no.3305 dated 29.12.2023.</p> <p>Contractor vide letter no. 00075 dated 30.12.2023 submitted a reply to the Suspension notice stating that they have performed maintenance work and road signage work at site as per requirement. PMU Dhubri vide letter no. 3313 dated 05.01.2024 informed the Contractor that only minimal maintenance work and installation of signage has been carried out at site with respect to the condition of road and their submission is not satisfactory. Further, PMU</p>

[Handwritten signature]
24/08/24

		<p>Dhubri informed that the process for inviting tender for maintenance work has already been initiated by PMU Dhubri. (Bid invited by RO-Guwahati on 06.01.2024; Bid due date: 16.01.2024)</p> <p>The letter dated 09.01.2024 was received vide email on 11.01.2024 (Hard copy not yet received).</p> <p>Further, as per site visit on 13.01.2024, it was observed that, very negligible quantity of maintenance work has been executed at site as compared to the total quantity of maintenance work to be executed as per the road conditions. The same was intimated to the Contractor vide PMU Dhubri letter no. 3330 dated 16.01.2024. The EPC Contractor has violated Article 10.4 and Article 14.2 of the Contract Agreement.</p>
iv.	<p>Further, it is to apprise your office that after getting Appointed Date of the subject project on 15/02/2023, we had aggregated all our resources for achievement of scheduled targets but unfortunately, in last year the early monsoon came in this North-East geographic region in the 1st week of April-2023 and lasted till Oct.-2023. Therefore, in such circumstances, the earthwork couldn't be done in full swing manner which restrained us from developing a firm base for receiving granular layers.</p> <p>Further, it is pertinent to mention that initially we had started sub-grade work and gradually achieved 11 Km of progress which was found to be deficient due to erroneous design concept and found to be incompatible with the site conditions. It was timely observed by the EPC Contractor after necessary examination at site and this mistake was rectified promptly by submitting revised drawings for the review of Authority which ultimately delayed the work progress.</p> <p>In such circumstances, it restrained us from achieving the first milestone target scheduled in the month of Oct.-2023. However, we have geared up by resolving all bottlenecks and within a month time the target of first milestone (MS-I) will be achieved by us without fail.</p>	<p>It is informed that there was negligible rainfall in the months of April and May 2023 in the project areas; hence, in the absence of any supporting document, the contractor's claim that there was early onset of monsoon is not justified.</p> <p>Further, Contractor is already aware of the weather conditions of Assam and should have planned their activities accordingly.</p> <p>Contractor's submission of design and drawings has been improper and in-complete, leading to several redundant correspondences and observations being raised by PMU Dhubri. The latest submission of Conventional Pavement Design by the Contractor on 02.01.2024 was also returned by PMU Dhubri vide letter no. 3328 dated 12.01.2024 due to inadequate submission of details.</p> <p>Contractor has claimed that they will achieve the 1st milestone within one-month time, however, no plan of action has been submitted to PMU Dhubri in this regard. As per their current pace of work, PMU Dhubri is highly doubtful that they will achieve the targets as deliberated in their letter. The EPC Contractor has violated Article 10.3(ii) of the Contract Agreement.</p>

In view of the EPC Contractor's reply and the submissions of the Authority, it is evident that the EPC Contractor is lagging behind in all aspects of execution of the Project. Being an EPC Contractor, it is obligatory on the part of the EPC Contractor to work within the Contractual norms of the Contract Agreement and to complete the work within the time schedule of different Milestones, especially being aware that it


24/03/24

is project of national importance. Further, the Contractor has inadequate resources at site and has repeatedly failed in all his commitments as well as failed to complete even the maintenance works of the existing road. Also, even after lapse of 334 days from the appointed date, the physical progress is as minimal as 4.20%, which signifies the inability and failure of the EPC Contractor to execute the project work.

18. **WHEREAS**, more than 11 (eleven) months have already passed after the declaration of Appointed Date and it can be seen that the EPC Contractor is unable to deploy sufficient manpower, material resources, qualified & experienced personnel, which shows the failure to proceed with the work, and commits default with provisions of Contract agreement thereby leading to cost overrun & time overrun for such a crucial and strategically important project.

19. *Whereas, M/s Simplex Infrastructures Limited vide its letter dated 09.01.2024 has requested to hold the termination with the assurance to resolve all bottlenecks and accelerate the progress, hence, a meeting was convened on 15.05.2024 under the Chairmanship of Director (T), NHIDCL, wherein the Contractor committed to achieve the following targets by 31st May 2024 to substantiate his assurances. It is observed that even after a lapse of said committed date i.e. 31.05.2024 and additional grace period till 11.06.2024, the contractor had failed to achieve his own commitment.*

Sr. No.	Item	Achievement till 15.05.2024	Cumulative Target to be achieved by 31.05.2024	Achievement as on 31.05.2024	Achievement as on 11.06.2024	Shortfall as on 11.06.2024
1	Sub-Grade	8.00 KM	10.00 Km	8.185 Km	8.185 Km	1.815 Km
2	GSB	5.00 KM	8.00 Km	7.195 Km	7.195 Km	0.805 Km
3	WMM	0.900 KM	2.00 Km	1.720 Km	2.125 Km	-0.125 Km
4	DBM	0.00 KM	1.00 Km	0.055 Km	0.285 Km	0.715 Km
5	Drains	1.767 KM	2.00 Km	1.767 Km	1.767 Km	0.233 Km
6	Culvert	0.0 Nos.	10 nos	1 no.	1 no.	09 nos.
7	Bridge Foundation	0.0 Nos.	1 no.	0 no.	0 no.	01 no.

Hence, Authority is left with no option other than to proceed for termination of the contract in the wider interest of the road users.

20. **WHEREAS**, it has become evident that the EPC Contractor is not in a position to execute the Contract within the provisions of the Contract Agreement and continues to be in default of the obligations as brought out in the Cure Notice leading to a major Material Adverse Effect on the Contract. Further, the EPC Contractor has breached the Contract Agreement, inter-alia, with the following defaults in terms of the Clause 23.1(i) of Article 23 of the Contract Agreement:

- i. Sub-clause (c): the Contractor does not achieve the latest outstanding Project Milestone-I due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty-Five) days;
- ii. Sub-clause (e): the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for


24/06/24

- 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorized by the Authority's Engineer;
- iii. Sub-clause (g): the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Engineer;
 - iv. Sub-clause (p): the Contractor has failed to fulfill any obligation, for which failure termination has been specified in this agreement; or
 - v. Sub-clause (q): the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

21. In view of the above-mentioned facts and circumstances, non-exhaustive fundamental breach, and EPC Contractor's persistent & sustained gross default in fulfilling contractual obligations, leading to a material adverse effect on the Project, the Authority is left with no other option but to terminate the Contract with M/s Simplex Infrastructures Limited in accordance with Clause 23.1(ii) of the Contract Agreement with immediate effect.

22. Upon Termination of this Contract on account of Contractor's Default under Article 23.1, the relevant provisions of the Contract Agreement shall henceforth apply.

23. 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.

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

Encl: As stated above.


24/06/24
(M.S. Deol)
Executive Director (T)
NHIDCL

Copy to:

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