

NHIDCL/Sikkim/NH-10/Sliding&NarrowZone/179347/2019/2671

Dated: 02.12.2024

WITHOUT PREJUDICE

To

The Authorized Signatory  
M/s KCC Buildcon Pvt. Ltd.  
5<sup>th</sup> Floor, JMD Empire, Sector-62,  
Golf Course, Extension Road, Gurugram, Haryana - 122102  
e-mail: kcc.dharsu@gmail.com

**Subject:** "Special Protection work on Rehabilitation and Restoration of sliding/sinking zone from Km 70+900 to Km 71+100 and Km 71+550 to Km 71+850 with JICA technical assistance including widening of narrow zone from Km 53+775 to Km 54+100 and from Km 63+045 to Km 63+470 on NH-10 (Rangpo to Ranipool section) in the state of Sikkim" -Termination of Contract under clause 59.1 & clause 59.2 of GCC of Contract Agreement- Reg.

Ref:

- i. NHIDCL Letter No. NHIDCL/Sikkim/NH-10/Sliding&Narrowzone/2019/1242 dated 28.02.2020
- ii. NHIDCL Letter No. NHIDCL/PMU-Ranipool/NH-10/2020-21/158 dated 11.06.2020.
- iii. NHIDCL Letter No.: NHIDCL/PMU-Ranipool/Narrow Zone/2020-21/12 dated 06.04.2021.
- iv. NHIDCL Letter No.: NHIDCL/PMU-Ranipool/Narrow Zone/2021-22/54 dated 22.04.2021
- v. NHIDCL PMU-Ranipool Letter No.: NHIDCL/PMU-Ranipool/Narrow Zone/2021-22/217 dated 04.06.2021
- vi. NHIDCL PMU-Ranipool Letter No.: NHIDCL/PMU-Ranipool/AE/NH-10/2021-22/1107 dated 11.02.2022
- vii. NHIDCL PMU-Ranipool Letter No.: NHIDCL/PMU-Ranipool/KCC/2021-22/1143 dated 23.02.2022.
- viii. NHIDCL PMU-Ranipool Letter No.: NHIDCL/PMU-Ranipool/KCC/2022-23/256 dated 01.07.2022.
- ix. NHIDCL Letter No. NHIDCL/Sikkim/ NH-10/Sliding&Narrowzone/2019/Part-I/1557 dated 29.08.2022
- x. Contractor letter No. KCC/NHIDCL/PMU-Gangtok/2023-24/202 dated 20.06.2023
- xi. NHIDCL letter No. NHIDCL/PMU-Ranipool/KCC/2023-24/295 dated 21.06.2023
- xii. NHIDCL Letter No. NHIDCL/PMU-Ranipool/AE/NH-10/2023-24/335 dated 27.06.2023
- xiii. NHIDCL Letter No.: NHIDCL/PMU-Ranipool/KCC/2023-24/354 dated 05.07.2023.
- xiv. Contractor letter No. KCC/NHIDCL/PMU-Gangtok/2023-24/203 dated 10.07.2023

- xv. Authority's Engineer Letter No.: AE/Ranipool/NH-10/Authority/282 dated 24.07.2023.
- xvi. Minutes of personal hearing held on 21.08.2023 vide Letter No. NHIDCL/RO-Gangtok/NH-10/KCC/2023/552 dated 25.08.2023
- xvii. Minutes of meeting held on 01.02.2024 vide Letter No. NHIDCL/RO-Gangtok/NH-10/2023/1089 dated 13.02.2024
- xviii. Contractor letter No. KCC/NHIDCL/Sikkim/2022-23/212 dated 12.02.2024
- xix. AE letter no. AE/Ranipool/NH-10/Authority/320 dated 23.02.2024
- xx. NHIDCL Letter no. NHIDCL/PMU-Ranipool/NH-10/2024-25/71 dated 26.04.2024
- xxi. Contractor letter no. KCC/NHIDCL/Sikkim/2024-25/217 dated 06.05.2024
- xxii. AE letter no. AE/Ranipool/NH-10/Authority/3232 dated 21.05.2024
- xxiii. Contractor's letter no. KCC/NHIDCL/PMU-Gangtok/2024-25/218 dated 23.05.2024
- xxiv. Contractor's letter no. KCC/NHIDCL/PMU-Gangtok/2024-25/220 dated 03.09.2024
- xxv. NHIDCL Letter no. NHIDCL/RO-Gangtok/NH-10/2024/546 dated 17.09.2024
- xxvi. Contractor's letter no. KCC/NHIDCL/PMU-Gangtok/2024-25/221 dated 24.09.2024
- xxvii. NHIDCL Letter no. NHIDCL/RO-Gangtok/NH-10/2024/578 dated 30.09.2024

Sir,

Whereas, Letter of Award (LOA) for the work of "Special Protection work on Rehabilitation and Restoration of sliding/sinking zone from Km 70+900 to Km 71+100 and Km 71+550 to Km 71+850 with JICA technical assistance including widening of narrow zone from Km 53+775 to Km 54+100 and from Km 63+045 to Km 63+470 on NH-10 (Rangpo to Ranipool section) in the state of Sikkim" was issued to M/s KCC Buildcon Pvt. Ltd. (Hereinafter referred as "the Contractor") on 28.02.2020 with a contract price of Rs. 33,84,57,552/-. Accordingly, the Contract Agreement was signed between M/s KCC Buildcon Pvt. Ltd. & National Highways Infrastructure Development Corporation Limited on 17.03.2020 and and Notice to Proceed was issued to the contractor on 11.06.2020.

2. Whereas, the following stretches on NH10 were to be treated and widened as per the Contract Agreement:

- (a) Location 1 - Sliding /Sinking Zone between Km 70+900 to Km 71+100.
- (b) Location 2- Sliding/Sinking Zone between Km 71+550 to Km 71+850.
- (c) Location 3- Widening of Narrow Road Zone between Km 53+780 to Km 54+030.
- (d) Location 4- Widening of Narrow Road Zone between Km 63+045 to Km 63+470.

3. Whereas, the scheduled completion date as per Contract Agreement was 10.06.2022.

4. Whereas, due to requirement/ change in site conditions, positive variation amounting to Rs. 5,09,28,259/- was approved by the Competent Authority and contract price was revised to Rs. 38,93,85,811/-.

5. Whereas, it has been found that the mobilisation of manpower, material, and machinery by the contractor was insufficient to complete the project work within the extended completion date of 31.07.2023. In this connection, the contractor was requested by NHIDCL, Field Office vide ref(xiii) to mobilise adequate manpower and machinery to



complete the remaining project work on a war footing basis. However, the progress of work remained very poor despite clear cut instructions from the Authority. Further, safety precautions were not being followed by the contractor, making the site vulnerable.

6. Whereas, Contractor vide ref (x) issued a Notice for Termination of the Contract under Clause 59 of the Contract Agreement, requesting to resolve hindrances notified along with approval of EOT, decision on variation proposal in narrow zone km 53 & sliding zone km 72 and release of withheld amount.

7. Whereas, NHIDCL in response issued a Notice of Breach vide ref(xi) on 21.06.2023 to the contractor as per clause 59.3 of the contract for causing fundamental breach of the contract and requested the contractor to submit reply within 15 days of issuance of the notice. The defaults notified are as under:

(a) Contractor failed to mobilize machinery & manpower for commencement of work. Contractor was directed to mobilize machinery & manpower and submission of Design & Drawings for slope protection, sinking zone & narrow zone within 07 days. However, the Contractor failed to provide adequate mobilization of resources & submission of required design and drawings.

(b) Non-execution of the work by the contractor in accordance with the standards and specifications. Contractor was informed that the drains, breast wall, etc constructed were damaged and needs rectification. Further, the traffic management done by the contractor was not adequate for ensuring the safety of the commuters. The defaults highlighted by the Authority for damaged, poor workmanship work was never rectified by the contractor which is clear violation of contract clause 59.2 (e), "the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the contractor fails to correct it within a reasonable period of time determined by the engineer;"

8. Whereas, a time extension was granted to the contractor upto 31.07.2023 for the completion of the project, however the contractor did not expedite the progress of works in order to complete the project in a timely manner.

9. The Contractor vide their letter dated 10.07.2023 submitted reply w.r.t 'Notice of a Breach'.

10. Whereas, the contractor had abandoned the site on 01.08.2023 without completing the work, leaving it in a damaged condition. The physical progress achieved by the contractor till July'2023 is only 71.74%.

11. Whereas, a personal hearing with the contractor was also conducted by then ED(P), RO-Gangtok on 21.08.2023, wherein the contractor requested to foreclose the contract, as the balance work could not be executed without additional variation and due to design failure of Martam slide zone. It was clarified that the default is on their part, as they could have submitted their inability for execution of balance work at an early stage soon after the approval of variation was granted.

12. Whereas, NHIDCL had issued several Show cause notices to the contractor for slow progress of work, requesting the contractor for expediting the works; however, no proactive approach had been taken by the contractor to ensure the same. 100% ROW was handed over on the commencement date of the project i.e.11.06.2020, but Contractor had never shown any positive intent towards the achievement of milestone, and never deployed the adequate manpower and machineries for completion of the project, which had further resulted the delay in completion of the project, and ultimately contractor had caused a fundamental breach of the contract by abandoning the work without prior approval of the Authority.



13. Whereas, contractor vide letter dated 12.02.2024 claimed an amount of Rs. 4,64,94,277/- (abstract attached) as final bill. In this regard, since damages in drains, protective works etc has not been repaired by the contractor, hence the contractor is liable to pay penalty towards failure in timely rectification of defects and completion of work, as per following provisions of GCC of the Contract Agreement:

(a) Clause 49.1 "Liquidated Damages" states that, *"The contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the completion date is later than the Intended Completion Date (for the whole of the works or the milestone as stated in the Contract Data). The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages does not affect the Contractor's liabilities."*

(b) Clause 36.1 "Uncorrected Defects" states that, *"If the contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount"*.

(c) Clause 54.1 "Cost of Repairs" states that, *"Loss or Damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions"*.

14. The contractor has shown lack of interest to rectify the defective work / damaged work despite of instructions by the Authority and the same has not been rectified yet. List of such defects are tabulated as below. It is mentioned that as per Section 4 (Contract Data) of RFP which is a part of the Contract Agreement, the Defect Liability Period is 3 years from the Date of Completion and as per Contract Agreement the Contractor is bound to repair the damaged work and rectify the defective work even after abandoning of work on 01.08.2023.

Sl. No.	Type of Defects	Whether Rectified Yes/ No	Notified on
1.	Gabion Wall at Narrow Zone Km 63 for widening of NH-10 has settled and collapsed during rain in the month of Jun 2023	No	Letter no. NHIDCL/PMU-Ranipool/KCC/2023-24/354 dated 05.07.2023.
	Construction of Plum Wall by the Contractor at Topakhani near Medhavi Skill University along NH-10 has cracked and is on the verge of collapse	No	
	the High Energy Absorption Nets installed on top at Martam Sliding Zone has broken and resulting in shooting boulders which is unsafe for traffic commuters.	No	
	Rectification of damaged drains	No	
2.	Damage Inflicted to Compost Plant at Martam: The damages were accessed by DPM Mr Alok Ranjan representing M/s KCC Buildcon Pvt Ltd on 10.03.2021. As per Clause 19 of the Conditions of Contract in the Contract Agreement adequate safety measures have not been installed at site.	No	Letter no. NHIDCL/PMU-Ranipool/Narrow Zone/2020-21/12 dated 06.04.2021.  Letter no. NHIDCL/PMU-Ranipool/KCC/2021-22/1143 dated 23.02.2022.

			Letter no. NHIDCL/PMU-Ranipool/KCC/2022-23/256 dated 01.07.2022
3.	Construction of Plum Wall, Culvert and Drain cleaning and Repair of damaged drain at various location along NH-10	No	Letter no. NHIDCL/PMU-Ranipool/Narrow Zone/2021-22/54 dated 22.04.2021.
4.	Rectification of the broken drains and cleaning of muck, traffic management, No safety measures, poor quality of kapoor more plum wall within 7 days	No	Letter no. NHIDCL/PMU-Ranipool/Narrow Zone/2021-22/217 dated 04.06.2021.
5.	Absence of weepholes in plum concrete Wall & poor quality of work: rectification within 3 days from issue of notice	No	Letter no. NHIDCL/PMU-Ranipool/AE/NH-10/2021-22/1107 dated 11.02.2022.

15. Whereas, it has become evidently clear that the Contractor has failed to comply with the terms and conditions set forth in contract agreement and directions of the Authority as per provisions of the Agreement to rectify the damages in the work done.

16. Whereas, the contractor is not in position to execute the project work and continues to be in default after **abandoning the project site since 01.08.2023**, leading to major material adverse effect on the Contract.

17. Whereas, the non-professional attitude of the Contractor towards the subject project and above acts of omission and commission by the Contractor has resulted in:

- (i) Immense public suffering because of the strategic & crucial importance of the road, which is main connectivity to Gangtok, Sikkim from Mainland India.
- (ii) The Authority losing goodwill amongst people of Sikkim
- (iii) Authority losing credibility in the eyes of its Stakeholders, being a 'Pilot Project' for specialized slope protection.

18. In view of the above and in conjunction to Authority's letter at ref(xi), EPC Contractor has caused the following fundamental breaches, as stipulated in clause 59.2 of GCC of the Contract Agreement which invites action viz. termination of the Contract:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;
- (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
- (g) the Contractor has delayed the completion of works by the numbers of days for which the maximum amount of liquidated damages can be paid as defined in the contract data"

19. Whereas, the Contractor has requested for foreclosure of the contract, which was deliberated in the meeting dated 01.02.2024, wherein the option to foreclose the contract was deliberated, subject to the submission of undertaking by the contractor that they shall not raise any future arbitration/legal claims in future. Although there is no specific provision in the subject contract for foreclosure, the contractor proposed to foreclose the contract



on mutual consent for which the contractor was willing to submit necessary undertaking in legal papers that they shall not take any legal, arbitration, contractual, or lawful steps against the authority/client for any matter, in the future upon payment of final foreclosure amount. Whereas, the deliberations done in the aforesaid meeting held on 01.02.2024 were done for discussion purpose only on the options available with NHIDCL in going ahead with the project work. However after due examination of options considering the lapses/defaults/fundamental breaches done by the contractor in the light of the Contract Agreement and the abandoning the work at site by the Contractor on 01.08.2023 and since there is no provision for foreclosure of contract in Contract Agreement, the Authority is left with no other option but to terminate the contract with M/s KCC Buildon Pvt. Ltd. in accordance to aforesaid breaches mentioned under Sub-clause 59.2 of the Contract Agreement. The requests of Contractor for foreclosing the work in lieu of the discussions held in the meeting held on 01.02.2024 has been rejected by Authority and the contractor has been categorically intimated of the intention of the Authority for going ahead with the termination of contract as per provisions of the Contract Agreement (refer RO-Gangtok letter dated 17.09.2024 and letter dated 30.09.2024).

20. Therefore, in the light of aforesaid non-exhaustive fundamental breaches of Contract, unprofessional approach and in view of the Contractor's gross defaults, which are solely attributable to the Contractor as well as non-compliance of various notices and instructions issued by the Authority with respect to the rectification of damaged works, slow progress, & non-deployment of required manpower, material & machineries, the Authority hereby terminates the contract in accordance to Clause 59.1 & fundamental breaches mentioned above under clause 59.2 of GCC of Contract Agreement with immediate effect.

21. Upon termination of this contract on account of Contractor's default under clause 59.1 & 59.2 of GCC of Contract Agreement, the relevant provisions of the Contract Agreement shall henceforth apply.

22. This Termination notice is issued without prejudice to any other right or remedy available to the Authority under the Contract Agreement and/ or Applicable law.

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

(M. Riten Kumar Singh),  
Executive Director (Tech)-III

**Copy to-**

- i. PS to MD, NHIDCL
- ii. PS to Director (A&F)/Director (T)-I/ Director (T)-II, NHIDCL
- iii. ED(T/P)s, NHIDCL
- iv. GM(T), NHIDCL-HQ (Sikkim Division)
- v. GM(IT), NHIDCL-HQ - *with a request to put the notice on website*
- vi. GM(P), NHIDCL; PMU-Ranipool