

**TERMINATION NOTICE**  
**(WITHOUT PREJUDICE)**

To,

The Authorized Signatory

M/s Binni Construction

C/o Binni Construction

Ashram Road, Hailakandi,

Assam - 788151,

E-mail: admin@binniconstruction.com & binniconstruction73@gmail.com

**Sub:** Construction of Balance work of the 4-lanning of section from Jorhat to Jhanji of NH-37 (Old): Pkg-II: Road Works from km 463+000 to km 477+000 (14.000 km), under SARDP-NE under EPC mode - Termination of EPC Contract under Article 23.1 of the Contract Agreement dated 07.02.2024 - reg.

**References:**

1. PMU's letter no. JRT/NHIDCL/GM/JJ/PKG-I/371/2023/5001, 19.02.2024
2. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/06 dated 22.02.2024
3. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/09 dated 27.02.2024
4. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/19 dated 12.03.2024
5. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/24 dated 13.03.2024
6. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/33 dated 26.03.2024
7. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/40 dated 30.03.2024
8. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/2023/5133 dated 06.04.2024
9. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/53 dated 20.04.2024
10. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/54 dated 20.04.2024
11. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2024/70 dated 25.04.2024
12. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/59 dated 29.04.2024
13. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/61 dated 01.05.2024.
14. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/2023/5194 dated 01.05.2024
15. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/67 dated 07.05.2024
16. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/68 dated 09.05.2024
17. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/72 dated 21.05.2024
18. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/73 dated 22.05.2024
19. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/82 dated 06.06.2024
20. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/83 dated 06.06.2024
21. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/2023/5309 dated 07.06.2024
22. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/2023/5321 dated 11.06.2024
23. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/90 dated 21.06.2024
24. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/100 dated 29.06.2024
25. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/109 dated 11.07.2024
26. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/126 dated 02.08.2024
27. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/129 dated 08.08.2024
28. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/134 dated 14.08.2024

29. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/146 dated 30.08.2024
30. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/152 dated 06.09.2024
31. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/156 dated 06.09.2024
32. AE letter no. AE/TL/PKG-II/NH-37/JJ/2024/170 dated 20.09.2024
33. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/191 dated 26.10.2024
34. AE letter no. AE/TL/Pkg-II/NH-37/JJ/2024/195 dated 30.10.2024
35. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/411 dated 03.11.2024
36. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/206 dated 20.11.2024
37. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/210 dated 28.11.2024
38. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/212 dated 29.11.2024
39. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/213 dated 01.12.2024
40. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/238 dated 16.01.2025
41. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/240 dated 18.01.2025
42. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/241 dated 18.01.2025
43. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/243 dated 20.01.2025
44. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/Pt-2/2024/6493 (A) dated 20.03.2025
45. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/2023/6616 dated 23.04.2025
46. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/Pt-2/2024/6644 dated 28.04.2025
47. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/423 dated 30.04.2025
48. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/296 dated 05.05.2025
49. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/305 dated 15.05.2025
50. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/441 dated 16.05.2025
51. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/306 dated 20.05.2025
52. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/308 dated 22.05.2025
53. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/310 dated 30.05.2025
54. AE letter no. AE/TL/JJ/PKG-II/NH-37/2024/313 dated 02.06.2025
55. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/468 dated 13.06.2025
56. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/330 dated 19.06.2025
57. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/499 dated 04.07.2025
58. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/340 dated 15.07.2025
59. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/358 dated 04.08.2025
60. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/368 dated 04.09.2025
61. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/378 dated 11.09.2025
62. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/381 dated 12.09.2025
63. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/573 dated 13.09.2025
64. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/383 dated 15.09.2025
65. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/384 dated 19.09.2025
66. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/Pt-3/2025/7490 dated 20.09.2025
67. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/587 dated 25.09.2025
68. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/390 dated 30.09.2025
69. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/561 dated 09.10.2025
70. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/601 dated 10.10.2025
71. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/408 dated 31.10.2025
72. EPC Contractor letter no. HO/BINNI/J-J/PKG-II/NH-37/2025/611 dated 31.10.2025
73. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/419 dated 10.11.2025
74. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/420 dated 10.11.2025
75. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/421 dated 10.11.2025
76. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/425 dated 14.11.2025
77. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/430 dated 18.11.2025
78. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2025/623 dated 18.11.2025
79. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/432 dated 20.11.2025
80. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/441 dated 01.12.2025

81. AE letter no. AE/TL/JJ/PKG-II/NH-37/2025/443 dated 03.12.2025
82. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2024/712 dated 10.12.2025
83. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2024/631 dated 29.12.2025
84. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2026/632 dated 11.01.2026
85. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/Pt-3/2025/7978 dated 29.01.2026
86. PMU-Jorhat letter no. JRT/NHIDCL/GM/JJ/PKG-II/372/Pt-3/2025/7979 dated 29.01.2026
87. EPC Contractor letter no. HO/BINNI/J-J/Pkg-II/NH-37/2026/632 dated 12.02.2026

Sir,

This has reference to the above-mentioned subject matter and the EPC Contractor's response dated 12.02.2026 to the Authority's Notice of Intention to Terminate dated 27.01.2026.

2. Whereas, the EPC Contract Agreement was executed between National Highways & Infrastructure Development Corporation Limited (NHIDCL), hereinafter referred to as "the Authority", and M/s Binni Construction, hereinafter referred to as "the EPC Contractor", on 07.02.2024 for execution of the subject Project. The Joint Memorandum under Clause 8.2 of the Contract Agreement (CA) was signed on 13.02.2024, and the Appointed Date was duly declared as 14.02.2024, with the Scheduled Completion Date falling on 11.08.2024 in accordance with Schedule-J of the Contract Agreement.

Vide para 13 & 14 of the EPC Contractor's letter dated 12.02.2026, EPC Contractor (EPCC) contended the date of Appointed Date (AD) from 14.02.2024 to 22.03.2024, merely on the ground that the revised scope and payment schedule was subjected to change as per clause 1.6 of Schedule A and thus the AD was to be shifted. which is contrary to the provisions of clause 1.6 of Schedule A, which does not say for the modification of the Appointed Date, but only provides for modification of the Contract Price on account of addition/deletion of the works, identified on the AD. The Joint inventory was carried out on AD, and thus the scope was frozen with the joint signature of EPCC, Authority and Authority's Engineer (AE). Thus, the claim of the EPCC is found untenable in view of the CA and thus rejected.

3. It is placed on record that the Authority duly fulfilled all contractual pre-conditions, including handing over 100% encumbrance-free Right of Way on the Appointed Date and facilitating execution of the Project strictly in accordance with the CA. The Joint Handover Memorandum dated 13.02.2024 clearly recorded the availability of the ROW as per Clause 8.2 and formed the basis of the declaration of the Appointed Date of 14.02.2024. The issues subsequently referred to by EPCC, as evaluated by the Authority, on the basis of contemporaneous records, were limited and intermittent hindrances, which were addressed and closure-intimated whenever raised. The AE has evaluated these limited hindrances, as indicated by EPCC in its letter dated 25.09.2025, and has communicated 13 days of admissible Extension of Time (EoT) attributable to such events in its formal assessment, vide letter dated 09.10.2025.

The EPCC vide para 15 of the letter dated 12.02.2026, raised the issue of EoT of 1857 days, which already been examined by AE in view of the express provisions of the CA and evaluated 13 days admissible, as conveyed to EPCC vide letter dated 09.10.2025. Further, EPCC's claim on account of deteriorations in the works after the Joint inventory dated 13.02.2024, is contrary to the provisions of clause 1.1 of Schedule B of the Contract Agreement, which expressly obligates the EPCC to rectify the deteriorated works without any Change of Scope (CoS) under Article 13 of the CA. The deterioration of the works,

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rectification of which falls under the scope of EPCC as per Clause 1.1 of Schedule B, does not entitle the EPCC to any EoT under Article 13 of the CA.

4. In terms of Clause 4.1 of the Contract Agreement, the EPC Contractor was obligated to plan, mobilise, execute, complete and maintain the Project Highway with due diligence, efficiency and adherence to contractual timelines. However, the Contractor has failed to comply with the required standards of performance in relation to the execution of RE wall works at VUP approaches, including maintenance of adequate material and manpower, mobilisation of plant and machinery, and maintenance of the existing Project Highway, as recorded in the AE's inspection reports and the correspondence referred to above. Such lapses on the part of the EPC Contractor have had an adverse impact on the Project's progress.

The EPCC's response, as made vide para 16 of the letter dated 12.02.2026, that non-conformity in RE wall works arose due to the alleged quality of earth material from the Brahmaputra River is untenable in light of Clauses 4.1, 10.1 (d), 11.1, 11.2 (iii), 11.12, 17.3 (b) and Schedule-D of the EPC Contract Agreement. The Contract neither restricts the EPC Contractor to any particular source of material nor transfers the risk of material availability to the Authority. Procurement of suitable materials conforming to Schedule-D is an absolute obligation of the EPC Contractor, and any failure in this regard constitutes a contractual default. Moreover, the alleged delay in issuing the LoA, even if assumed for the sake of argument, cannot be related to a quality compromise by the EPCC. Any intimation by NHIDCL to its higher offices about the EPCC's chosen sources and issues in the sources cannot be construed as an admission to the delay events claimed by the EPCC.

EPCC's assertions made vide para 16 of the letter dated 12.02.2026, regarding adverse and uncondusive weather conditions, are replied to herewith:

- a. **Weather Conditions are deemed known and not a Force Majeure:** The EPCC's claim of difficulty due to rainfall is not admissible under the Contract and is rejected in its entirety. By virtue of Clauses 2.5.1 and 2.5.2(d) of the RFP, the EPCC is deemed to have visited the Project site and satisfied itself about all matters, including "climate, weather data" and other conditions, before submitting its bid. Clause 2.5.1 specifically requires bidders to ascertain "climate" and "weather data," and Clause 2.5.2(d) establishes the irrebuttable legal presumption that by submitting its bid, the EPCC "*has satisfied itself about all matters, things and information...necessary and required for submitting an informed BID...and performance of all of its obligations thereunder.*" Furthermore, Article 21 of the Contract Agreement defines Force Majeure Events exhaustively, and normal seasonal rainfall in the North East region—a well-known and predictable climatic phenomenon—does not qualify as an unforeseeable Force Majeure Event. The EPCC cannot cite routine monsoon rainfall as a reason for non-performance when it was contractually obligated to factor such conditions into its bid, work planning, and resource deployment. The claim is therefore legally impermissible and factually baseless.
- b. **EPCC's own data contradicts its rainfall claims:** Even as a matter of fact, the EPCC's own rainfall data submitted along with its EOT (Extension of Time) proposal dated 25.09.2025 conclusively contradicts its claim of excessive or unprecedented rainfall. The data reflect that, except for the months of June, July, and October 2024, all other months in the year 2024 witnessed less rainfall than the average rainfall of the past 10 years (2014-2024). This factual evidence demonstrates that rainfall in 2024 was largely within normal historical ranges and, in most months, was actually below average. Therefore, the EPCC's argument of exceptional weather conditions is inconsistent with the documentary record and does not absolve the EPCC of its failure to perform contractual obligations. The EPCC cannot claim that below-average or

average rainfall in the majority of months constituted an impediment to performance when such conditions were entirely foreseeable and within historical norms that any competent contractor should have anticipated and planned for.

- c. **Delayed design submissions prove lack of resource mobilisation, not weather impact:** Furthermore, the timeline of the EPCC's own design submissions irrefutably demonstrates that the delays were caused by the EPCC's failure to mobilise adequate resources and not by rainfall or weather conditions as falsely alleged. The following critical delays are on record: (i) Submission of RE (Reinforced Earth) panel designs required to cast RCC panels was made belatedly on 26.04.2024, after a delay of over two months from the Appointed Date; (ii) Submission of reinforced soil wall drawings at Km 466+453 was made as late as 19.06.2024; (iii) Submission of reinforced soil wall drawings at Km 474+939 was made as late as 25.09.2024, after the lapse of the original construction period; and (iv) Submission of reinforced soil wall drawings at Km 470+475 was made as late as 14.12.2024, after the lapse of the original construction period. These significant delays in submission of essential design drawings, which are a prerequisite to commencement of construction activities, occurred well before or independent of any alleged rainfall impediments and clearly establish that it was the EPCC's own failure in resource mobilisation, design preparation, and project planning that impacted the progress of work, not weather conditions. Design work can be undertaken irrespective of site weather conditions, and the EPCC's failure to submit timely designs cannot be attributed to rainfall. This pattern of delayed submissions exposes the EPCC's claim of weather-related delays as a mere pretext.
- d. **Alternative material sources were available but not utilised:** Even if it is assumed, purely for the sake of argument, that the river sources chosen by the EPCC for earth filling were temporarily unavailable due to alleged excessive water levels, the EPCC had ready access to alternative sources of earth material available in Nagaland, Tuli and other locations. However, the EPCC failed to utilise these alternative sources, demonstrating a lack of proper planning, resource mobilisation, and project management. A competent and diligent contractor is expected to identify and plan for multiple material sources and alternative arrangements to ensure continuity of work under varying site conditions. The EPCC's failure to do so is a breach of its obligation under Clause 4.1 to perform its obligations "in accordance with Good Industry Practice and as a reasonable and prudent person." Moreover, the EPCC's claim of excessive rainfall and related difficulties, as made in the meeting chaired by the Hon'ble Minister of Road Transport & Highways, was found to be baseless and unsubstantiated. In fact, the EPCC's performance in October 2024 was severely criticised, and the EPCC was directed to expedite work with the deployment of additional resources. Various show-cause notices regarding slow progress and deficiencies in resource mobilisation issued by the Authority to the EPCC are on record and speak for themselves. These notices consistently identify inadequate resource deployment—not weather conditions—as the cause of delays.
- e. For the foregoing reasons, the Authority categorically rejects the EPCC's claims regarding unsuitable weather conditions as legally impermissible under Clauses 2.5.1, 2.5.2(d), and Article 21, factually contradicted by the EPCC's own data, and exposed as pretextual by the pattern of delayed design submissions and inadequate resource mobilisation. The EPCC bears sole responsibility for delays and failures in project execution.

Moreover, vide para 17 & 18 of the EPCC's letter dated 12.02.2026, EPCC has attempted to equate the mobilisation for a particular Month as the Mobilisation required during the project period, rejected the AE's notification for slow progress and deficient resources as false, which is arbitrary and rejected. All the delay vents claimed by the EPCC dated 25.09.2025, stand examined vide AE letter dated 09.10.2025 and disposed off.

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5. The Contractor failed to achieve the Project Milestones stipulated in Schedule J of the Agreement. Project Milestone-I (10% progress), due on 13.03.2024, was achieved only on 16.09.2024. Project Milestone-II (45% progress), due on 13.05.2024, was achieved only on 22.01.2025. Project Milestone-III (70% progress), due on 12.06.2024, was achieved only on 27.03.2025. Following the achievement of Milestone-III, physical progress on the Project, as per records, remained between 92.00% and 95.86% for approximately four consecutive months between 01.05.2025 and 30.09.2025. During this period, the Contractor failed to adhere to revised work programmes dated 30.04.2025, 16.05.2025, 13.06.2025, 04.07.2025, and 13.09.2025. Thereafter, the Project site has, as notified by the AE vide letter dated 31.10.2025 under Clause 23.1(i)(d) of the EPC CA, remained abandoned since 20.10.2025, with negligible manpower, machinery and material deployment. Such conduct, in the Authority's assessment based on contemporaneous site records, joint inspections and repeated communications issued by the Authority's Engineer, demonstrates failure to proceed with due diligence and manifests intention to abandon the Works within the meaning of Article 23.1(c) and Article 23.1(d) of the Contract Agreement.

6. The EPC Contractor has failed to achieve the Project Milestones stipulated under Schedule-J and has failed to complete the Project by the Scheduled Completion Date of 11.08.2024. The delay has now exceeded one year, and no further Extension of Time, beyond 13 days, has been found admissible by the Authority or the Authority's Engineer. The Authority's Engineer has evaluated EPCC's EOT request dated 25.09.2025 and determined only 13 days of admissible EOT, which was duly communicated to EPCC vide AE letter dated 09.10.2025, strictly in accordance with Clause 10.5 read with Clause 21 of the EPC Agreement. In the Authority's assessment, the delay is attributable, inter alia, to the EPC Contractor's deficient planning, inadequate mobilisation of resources, inadequate execution and continued non-performance, thereby attracting the consequences contemplated under Clause 10.3, Clause 10.6 and Article 23.1(b) and 23.1(f) of the Contract Agreement.

The EPCC vide **para 19 to 21** of the letter dated 12.02.2026, has attempted to justify the lapses in the Milestones, placing reliance on the delay events, the EPCC claimed vide EoT proposed dated 25.09.2025. However, it is clarified that each of the delay events has been examined by the AE in detail, in view of the express provisions of the CA and the claimed delay events, duly evaluated by AE, were conveyed to EPCC vide AE's letter dated 09.10.2025, with a 13-day finding admissible, with the balance delay conclusively attributable to the EPC Contractor's own acts and omissions. The EPC Contractor's further assertion that the Project site was abandoned due to alleged forceful blockade by its vendors or related parties is contractually untenable and legally irrelevant, as internal commercial disputes, vendor-related issues, etc. fall entirely within the EPC Contractor's domain of risk and responsibility and do not excuse suspension, demobilisation, or abandonment of the Works, nor do they dilute the operation of Clause 23.1(d) of the EPC Contract Agreement.

7. The EPCC submitted an initial work programme in August 2024, aligning scheduled and actual completion dates. However, it did not maintain the planned monthly progress, owing to, inter alia, inadequate material and machinery mobilisation and cash flow constraints as recorded in AE's reports. The deficit relative to the initial schedule increased month by month. When the deficit reached 85%, the EPCC submitted a revised programme only after delays had already occurred and was found in default under Article 10.1(iii)(b) of the EPC CA. A second work programme submitted on 25.04.2024 projected December 2024 completion, but, as per progress records, immediately showed shortfalls against the projections. Over time, EPCC submitted ten different programmes, each deferring the projected completion date. These repeated failures, as evidenced by the AE's assessments, demonstrate inadequate planning and resource mobilisation and have contributed to the continuing delays.

8. The EPCC has, as per progress records, failed to complete the activities envisaged in the six-month scheduled construction period and achieved only approximately 9.50% work progress over the six-month period up to October 2025. Additionally, EPCC has, on six separate occasions within this period, pushed back its own indicated completion timelines by about one month, such that work envisaged to be completed within a month remained incomplete even after several months. The Contractor has also not mobilised sufficient resources as planned and has consistently underperformed against its own programmes. The maximum deviation from the planned progress in the last ten work programmes prior to the revised schedule submission was 85%, 56%, 56%, 56%, 19%, 14%, 10%, 8%, 7%, 7%, and 4%.

9. The EPCC was duly notified on multiple occasions to submit the revised work programme, encompassing resource-based and cash cycle-based schedules, in strict compliance with Clause 10.1 (iii) (b) of the EPC Construction Agreement. Correspondence from the Authority's Engineer, dated 01.05.2024, 07.05.2024, 06.06.2024, 14.08.2024 and 19.09.2025, as well as the Authority's letters dated 06.04.2024, 07.06.2024, 20.03.2025, and 28.04.2025, constitute formal reminders in this regard. The monthly Inspection reports of AE, issued through various letters, highlighted several defaults to the EPCC, especially inadequate resource utilisation, leading to poor progress at the site.

The EPCC, vide paras 22 to 24 of the letter dated 12.02.2026, has attempted to allege failure to achieve the work programmes and planned progress, due to withholdings/deductions by the Authority and unfavourable weather conditions. As regards the claims of withholding, the EPCC has no contractual basis, and the issue has been dealt with in detail, and a reply to the same has been furnished vide the Authority's letter no. 7974 dated 27.01.2026. It has been clearly brought out in the letter dated 27.01.2026 that none of the claimed withholdings stands valid in view of the CA, and there are recoveries against the LD, rate difference, and risk & cost actions for which the Authority reserved its right. Moreover, the claim of unfavourable weather conditions and lapses in the Milestones/failure in the planned progress of the EPCC is rejected in terms of clauses 4.8, 4.11, 6.1, and 6.1 (vi) of the EPC Contract Agreement.

Vide para 25 of the EPCC's letter dated 12.02.2026, the EPCC has labelled the critical safety works as minor works, which have seriously compromised road safety, resulting in a 4-lane road being operated without safety measures, leading to multiple accidents and deaths on the road. This is the height of ignoring the obligations of the EPCC. The non-completion of such works and repeated defaults on the part of the EPCC are not to be admitted as defaults, citing minor works, is arbitrary and rejected.

10. The EPCC had submitted the Extension of Time for 1857 days vide letter dated 25.09.2025 on account of various alleged delay events. The EoT proposal was examined by AE and found 13 days admissible as per the CA, as intimated by the AE to the EPCC vide letter dated 09.10.2025, as per the following details:

Sl No.	Delay Event	Claim of EPCC	AEs evaluation
1	Delay in awarding the project	155	0
2	Delay in providing a hindrance-free ROW	416	0
3	Delay due to unseasonal rains	64	0
4	Delay in approving proof and safety consultants	23	0
5	Delay due to the non-availability of construction material due to waterlogging in the supply zone area	210	0

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6	Delay due to VVIP visits, the parliament election, social unrest and other issues	133	13
7	Delay due to the execution of additional works due to damage to the works of the previous contractor	235	0
8	Delay due to the 2nd monsoon of the year 2025	180	0
9	Delay due to non-approval of relaxations in schedule-H	130	0
10	Delay due to non-release of mobilisation advance BGs on time	27	0
11	Delay due to withholding payments on account of non-achievement of the milestone	284	0
	<b>Total Days</b>	<b>1857</b>	<b>13</b>

Even assuming, without admitting, that limited hindrances occurred during execution, the same have been evaluated in accordance with the Contract and compensated through an admissible Extension of Time of 13 days. In the Authority's assessment, such limited events do not, either individually or cumulatively, justify the prolonged delay exceeding one year, the failure to mobilise resources, the substantial demobilisation/abandonment of the site, or non-compliance with safety and maintenance obligations under the Contract Agreement.

The EPCC's allegation, made in paragraphs 26 & 27 of the letter dated 30.01.2026, that AE's evaluation was arbitrary *and contrary to delay analysis principles*, is unfounded and is hereby dismissed.

11. The EPCC has, in the Authority's assessment, not met its contractual obligations for the Highway Project in accordance with Schedule D of the EPC CA. Multiple NCRs have been issued to the EPCC by AE, as documented in AE letters dated 27.02.2024, 12.03.2024, 13.03.2024, 26.03.2024, 30.03.2024, 20.04.2024 (2 nos.), 21.05.2024, 29.06.2024, 08.07.2024, 02.08.2024, 08.08.2024, 30.08.2024, 06.09.2024 (2 nos.), 26.10.2024, 20.11.2024, 28.11.2024, 01.12.2024, 18.01.2025 (2 nos.), 20.01.2025, 05.05.2025, 15.05.2025, 20.05.2025, 22.05.2025, 30.05.2025, 02.06.2025, 19.06.2025, 15.07.2025, 04.08.2025, 04.09.2025, 11.09.2025, 12.09.2025, 15.09.2025, 30.09.2025, 10.11.2025 (2 nos.), 14.11.2025, 20.11.2025 and 01.12.2025. Pursuant to Clause 11 of the CA, the Contractor is obligated to ensure that construction, materials, and workmanship comply with the specified requirements, standards, and good industry practice. It is evident from the outstanding NCRs that the Contractor has not rectified all notified non-conformities, constraining the AE and Authority to deduct the corresponding work value in accordance with Clause 19.5 (iv) of the EPC CA.

The EPC Contractor's attempt, in paragraphs 28, 29 & 30 of its reply dated 30.01.2026, to justify such non-conformities on the grounds of pending approvals or site constraints is factually vague, contractually untenable, and unsupported by record. Further, the contention that NCRs are routine in nature and do not warrant termination is contrary to the express provisions of the Contract Agreement, particularly **Clauses 4.1(xi), 11.1, 23.1(i)(g), 23.1(i)(q) and 23.1(ii)**, which collectively recognise breach of obligations, material adverse effect, and sufficient grounds for termination of the EPC Contract. Moreover, the allegations regarding the impartiality of the AE are baseless and contrary to the provisions of the CA.

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12. Pursuant to Clause 10.4(i) of the Contract Agreement, the Contractor was explicitly obliged to maintain the existing lanes of the Project Highway at its own cost during the Construction Period, ensuring their traffic-worthiness and safety standards are not substantially inferior to their condition on the Appointed Date. Based on AE's inspection reports and contemporaneous records, the Authority notes that the condition of the existing lanes has deteriorated in several stretches and that vehicle movements have been adversely affected, which the Authority attributes to inadequate maintenance by the Contractor. Despite repeated and multiple notices—including letters dated 22.02.2024, 29.04.2024, 01.05.2024, 09.05.2024, 22.05.2024 (AE, Slow Progress), 06.06.2024, 21.06.2024, 11.07.2024, 20.09.2024, 15.10.2024, 30.10.2024, 29.11.2024, 03.11.2025, 18.11.2025; 20.11.2025, and 03.12.2025, as well as other contemporaneous correspondence and photographic records, the EPCC has, in the Authority's view, not adequately discharged these maintenance obligations. Additionally, safety lapses within the construction zone have been identified in AE's reports, further contravening Clause 10.4(i) of the EPC Contract Agreement. Such continued non-compliance with maintenance and safety obligations establishes a contractual default by the Contractor.

The narrative defence to the factual evidence of non-maintenance of the project Highways, as stated in **para 31 to 37** of the letter dated 12.02.2026, is unsubstantiated, lacks merit, and is rejected herewith. The site inspection report submitted by the Authority to the State Government can be applicable for the particular time period, and cannot be equated with the Contract period, overriding the various notices, photographs and other evidence on the record.

As regards the assertion of the EPCC about the defects in the works done by the previous Contractors, and the increased cost of the maintenance, the following is clarified,

- a. The EPC Contractor has impermissibly sought to attribute its contractual obligation of maintaining the existing highway to alleged deficiencies in works executed by previous contractors, and circumstances purportedly constituting force majeure or events beyond the scope of the Contract. These contentions are wholly untenable, misconceived, and are hereby rejected in their entirety.
- b. The EPC Contractor has evidently disregarded the express and unambiguous provisions of **Article 10.4(i) of the EPC Contract Agreement**, read with **Clause 1.6 of Schedule-B** and **Clauses 2.5.1 and 2.5.2(d) of the RFP**, which explicitly and categorically stipulate that the Contractor shall have fully acquainted itself with all site conditions, existing road conditions, access routes, traffic patterns, weather and climatic conditions (including monsoon and post-monsoon impacts), and all attendant risks prior to submission of its Bid, and that the Contractor shall be solely responsible for maintaining the existing highway in a motorable condition throughout the construction period, irrespective of pre-existing deficiencies, seasonal variations, or weather-related deterioration. The obligations cast upon the Contractor under Article 10.4(i) are neither contingent upon the condition of pre-existing works nor subject to exemption on account of monsoon-related deterioration or increased maintenance requirements. Such obligations form an integral and inseparable part of the Contract, and the Contractor is deemed to have factored all associated costs, risks, and contingencies into its Bid Price.

13. As per EPC CA, the maximum time to obtain approval for all the drawings was one month. However, the EPCC submitted the drawings after a significant delay, with the first drawing submitted in April 2024, and the drawings being submitted even in March 2025 and thereafter. This lapse by the EPCC has also caused delays and the non-completion of the project to date.

In **paragraph 38 & 39** of its reply dated 12.02.2026, the EPC Contractor has alleged that delays in drawing submissions were due to incomplete site inputs and repeated changes initiated by the Authority or the Authority's Engineer; however, this claim is factually incorrect and contractually untenable, as the Contract Agreement places the responsibility for design and drawing preparation squarely upon the EPC Contractor and does not envisage any prerequisite inputs to be provided by the Authority or the Authority's Engineer. By way of illustration, the RE Wall Panel drawing submitted via letter dated 26.04.2024 was prepared and submitted without any inputs from the Authority or the Authority's Engineer, clearly demonstrating that such inputs were not required. Similarly, the RE Wall drawing submitted via letter No. HO/BINNI/J-J/Pkg-II/NH-37/2024/113 dated 29.06.2024, PUP @ 474+939 drawing submitted on 25.09.2024, the junction drawing submitted on 05.07.2024, the median and bus shelter drawings submitted on 01.09.2024, and the box culvert drawing submitted on 16.07.2024 were all submitted well beyond the time stipulated under the Contract. The EPC Contractor has neither identified nor substantiated any specific input allegedly required from the Authority or the Authority's Engineer, either in its reply dated 12.02.2026 or at any time during the currency of the Contract, and the delay in submission of drawings is therefore solely attributable to the EPC Contractor.

14. Based on the facts mentioned above and, in view of the EPC Contractor's persistent and sustained defaults in fulfilling contractual obligations as recorded in the correspondence and reports cited herein, a Cure Period Notice to the Contractor under Clause 23.1(i) of the CA, recording the Contractor's defaults, was issued on 11.06.2024. The reply of the EPCC dated 01.07.2024 was, upon examination by the Authority, found to be contrary to the factual and contractual position and devoid of merit, as intimated to EPCC vide Authority's letter number 5715 dated 18.09.2024. Due to continued non-performance and failure to address safety and maintenance obligations, the Authority issued a Risk-and-Cost Notice on 20.09.2025. The Authority and the AE have recorded that the Contractor demobilised from and ceased work at the site with effect from 20.10.2025, and the Authority's Engineer issued a formal notification under Clause 23.1(i)(d) on 31.10.2025 to this effect.

In **paragraphs 40 to 46 of EPCC's letter dated 12.02.2026**, the EPCC alleged that they had submitted a reply to the Cure Period Notice dated 11.06.2024 vide their letter dated 01.07.2024, and that their response on the defaults was not properly considered. This allegation is false and rejected. Each defence submitted by the EPCC vide their letter dated 01.07.2024 was thoroughly examined by the AE, whose evaluation was submitted to the Authority vide letter no. 122 dated 25.07.2024. The Authority's assessment on the defaults was subsequently conveyed to the EPCC vide letter no. 5715 dated 18.09.2024. Moreover, the claimed delay vide **para 41,42,43** has been examined by the AE vide letter dated 09.10.2025. The issue of withholding, as falsely claimed by the EPCC, has been dealt with in detail and found recoverable from EPCC against LD and rate differences, as intimated to EPCC vide letter dated 27.01.2026. The EPCC's claim regarding work programme submission in good faith and alleged pause due to constraints is equally baseless and rejected, as the EPCC failed to respond to date, except through its reply to the Notice for Intention to Terminate dated 29.01.2026, regarding the abandonment notification issued by the AE vide letter dated 31.10.2025.

15. On the contrary, the Authority has consistently extended substantial support to the EPC Contractor beyond strict contractual requirements, including: (i) relaxation of Schedule-H to ease the Contractor's cash flow, (ii) issuance of comfort letters to material suppliers and equipment vendors at the Contractor's request, (iii) facilitation of direct payments to subcontractors upon the Contractor's request, and (iv) continuous administrative coordination with district authorities to assist in resolving operational constraints. These measures, which are not mandated under the Contract, demonstrate NHIDCL's intent to facilitate the timely completion of the Project in the larger public interest. They also

demonstrate that the Authority has acted reasonably, proportionately and in good faith, and that the present action is being contemplated as a measure of last resort after the Authority has exhausted the contractual remedies and opportunities for cure available to the EPC Contractor.

The EPCC's attempt to shift the grounds of seeking support from the Authority to the Authority's default, as vide para 46 of EPCC's letter dated 12.02.2026, is wholly baseless, contrary to the documented contractual record, and constitutes an afterthought. The allegation that comfort letters were self-serving is particularly contradictory, given that such letters were issued specifically at the EPCC's own request when the EPCC was unable to arrange materials independently and was failing in its core contractual obligations. All the support extended by the Authority was based on the repeated requests made by the EPCC, which fall beyond the Authority's obligations specified in the CA.

16. AE has notified the EPCC that the NSV tests have been conducted on the works completed by the EPCC, and the works were found to be non-conforming to the standards and specifications of the Manual specified in the Contract. The EPCC has failed to work on rectification of riding quality and non-conformance of the works despite the notification by the Authority Engineer.

The EPCC has accepted vide para 47 to 50 of the letter dated 12.02.2026 that issues of riding quality exist and are to be rectified. However, the allegation of the Authority's default in fulfilling its obligations is baseless and denied. The assertion of the EPCC made vide paras 47 to 50 of the letter dated 12.02.2026, that the failure in attending the rectification works was due to withholding by the Authority, is false, devoid of merit, and rejected.

17. Authority vide letter no. 5309 dated 07.06.2024, intimated the EPCC about lapse in Milestones, while rejecting the revised timelines and work programme submitted by the EPCC, and imposed the Damages @ 0.05 % per day in terms of Article 10.3(ii) and 10.3 (iii) of the EPC CA. Further, vide Authority's letter dated 11.06.2024, various defaults, attributable to the EPCC, deeming the EPCC in default and liable to make the payments of the damages @ 0.05% day, were intimated along with the Cure Period Notice. Thereafter, vide Authority's letter dated 23.04.2025, the damages to the tune of Rs. 9.33 crore were intimated as due for payment by EPCC to Authority and asked the recovery mechanism from EPCC for LD of Rs. 9.33 Crore, failing which the Authority would be constrained to deduct the damages from the payments and securities available in the Contract. The EPCC's reply has been examined and, in the Authority's view, lacks merit and does not displace the Authority's entitlement to levy and recover damages under the EPC CA and applicable law.

18. It is placed on record that the damages recovered from running payments of the EPCC so far are Rs. 4.87 crore against the damages of Rs. 9.33 Crore, thus a payment of damages of Rs. 4.46 Crore for the damages is to be paid by the EPCC to the Authority in accordance with Clause 10.3 (i) and 10.3 (ii) of the EPC CA.

The EPCC's assertion vide para 51 to 53 against the Authority's right to levy the damages for delay in the project completion, strictly in accordance with the provisions of the EPC CA, is devoid of merit and rejected.

19. Despite running the traffic in four lanes since April 2025, the EPCC has not completed the safety works in accordance with the EPC CA, resulting in the Authority's assessment based on AE's reports, in unsafe traffic operations along certain stretches and an increased risk of accidents. The EPCC has, therefore, failed to ensure the safety of the stretch, in breach of its obligations under Clause 10.4 of the EPC CA.

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20. Throughout the execution period, the Authority and the Authority's Engineer issued numerous written notices, directions and reminders cautioning the EPC Contractor regarding slow progress, non-mobilisation of resources, failure to comply with approved work programmes, deficiencies in maintenance and safety, and non-rectification of defects. Despite the issuance of the Risk and Cost Notice dated 20.09.2025 and subsequent communications, the EPC Contractor failed to cure the defaults or demonstrate, to the Authority's satisfaction, any credible intent or capacity to complete the Project. Such continued non-compliance constitutes a clear default under Article 23.1(i)(d) of the Contract Agreement.

21. A formal Cure Period Notice under Clause 23.1(i) was issued to the Contractor on 11.06.2024. Due to continued non-performance and failure to address safety and maintenance obligations, the Authority issued a Risk-and-Cost Notice on 20.09.2025, and the AE subsequently issued a notification under Clause 23.1(i)(d) on 31.10.2025, recording cessation of works at the site.

22. The EPC Contractor has persistently failed to comply with its safety and maintenance obligations under Clause 10.4 of the Contract Agreement. Repeated deficiencies were observed in traffic safety arrangements, signage, road furniture, barricading and riding quality, thereby endangering public safety. Further, several Non-Conformance Reports were issued by the Authority's Engineer in respect of non-conforming works relating to RE walls, retaining walls, drainage, junctions and finishing works.

The EPCC's reference to the letter dated 17.02.2025 in para 56 of the letter dated 12.02.2026, wherein the EPCC has submitted the road signage plan to be implemented, is not the work done at the site. The safety works are pending execution at the site, as notified to EPCC vide daily notification of pending works by the AE. The pendency of the road safety works has never been contested by the EPCC so far, except for the untenable position now adopted by the EPCC that mere submission of a road safety signage plan constitutes compliance with safety obligations under the Contract.

23. The Authority is constrained to record that, in its assessment, the cumulative effect of the EPC Contractor's persistent defaults, continued non-performance, cessation of work at the site, failure to rectify defects, and repeated safety and maintenance lapses has resulted in a Material Adverse Effect on the Project. The prolonged delay and lack of progress have caused public inconvenience, adversely affected road safety, and defeated the fundamental objective of timely completion of an important national highway corridor. Despite repeated notices, indulgences, and extraordinary facilitative measures extended by the Authority beyond contractual obligations, the EPC Contractor has, in the Authority's view, failed to demonstrate either the intent or the capability to remedy the defaults or complete the Works. The aforesaid consequences constitute a Material Adverse Effect within the meaning of the Contract, as they have (i) compromised public safety, (ii) exposed the Authority to recurring maintenance and liability risks, (iii) delayed achievement of the Project's intended public purpose, and (iv) impacted the Authority's ability to discharge its statutory obligations as a public body entrusted with national highway development.

24. The Authority further notes that the EPC Contractor's replies to the Cure Period Notice dated 11.06.2024 and the Risk-and-Cost Notice dated 19.09.2025 (read with 20.09.2025), including submissions made vide letters dated 10.10.2025, 18.11.2025, 10.12.2025, 29.12.2025 and 11.01.2026, have been duly examined and responded to by the Authority through letters dated 27.01.2026. The explanations furnished by the EPC Contractor have, in the Authority's view, not been supported by the contemporaneous records, are not acceptable under the terms of the EPC CA, and have not resulted in the cure of the notified defaults or demonstrated any credible plan for resumption and

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completion of the Project. The EPC Contractor, therefore, continues, in the Authority's assessment, to remain in persistent and continuing default under the Contract Agreement.

The reply furnished by the EPCC vide letter dated 12.02.2026, vide para 57 & 58 above, is arbitrary, devoid of facts and merit and rejected.

25. With regard to the Change of Scope (CoS), the EPCC's assertion that an amount of Rs. 21.22 crore has been withheld under the head of Change of Scope (CoS) is factually incorrect and contractually untenable, as the claimed CoS was never approved in accordance with Article 13 of the EPC Contract Agreement. Although EPCC submitted a CoS proposal on 23.09.2025 claiming Rs. 21.22 crore, no Change of Scope Order or prior written consent was issued by the Authority, which is a mandatory precondition under Clauses 13.2(v) and 13.4(i). The EPCC also failed to furnish any documentary evidence substantiating the execution, admissibility, or eligibility of the alleged works as CoS. The AE, after examining the proposal, returned it seeking detailed justifications and evidence vide letter dated 09.10.2025, which were not addressed by EPCC even in its revised submission dated 31.10.2025 for an enhanced amount of Rs. 24.81 crore. Consequently, the AE rejected the CoS proposal vide letter dated 10.11.2025 due to violations of Article 13, inadmissibility under Clause 1.1 of Schedule B, and lack of supporting records. No further representation has been made by EPCC thereafter, and hence, no amount stands withheld under the CoS head.

The EPCC asserted vide para 60 to 63 of the letter dated 13.02.2026 that the 870 m service road had been settled, requiring reconstruction, as also noted by the special Project Monitors, which means the CoS stands approved, is misplaced and misleading. The CoS items, if any, are to be executed and processed as per Article 13 of the CA, which have not complied with. The assertion of arbitrary return of the CoS lacks a factual basis and is rejected. The allegations made by EPCC vide para 63 of the letter dated 12.02.2026 are baseless.

**26. Issues of rate difference and claim of withholding of Rs. 2 Crore:**

- a. Schedule-H of the Contract Agreement (CA) governs interim payments and is based on the balance scope of work finalised strictly under Clause 1.6 of Schedule-A, with no additional scope introduced. The status of works executed by the previous contractor as on the NIT date was clearly specified in Schedule A and Schedule B. In accordance with Clause 1.6, the actual balance scope and modified Contract Price were determined on the Appointed Date through a Joint Inventory dated 13.02.2024, conducted in the presence of the terminated contractor, the present EPCC, the Authority, and the Authority's Engineer (AE). The Joint Inventory was verified and signed by the EPCC without any protest. Based on the said Joint Inventory, the AE submitted the modified scope, Schedule-H and Contract Price on 26.02.2024, revising the Contract Price from Rs. 99.00 crore to Rs. 93,26,36,660.23. The Authority communicated the full details of the revised price to the EPCC vide letter dated 19.03.2024 and requested submission of Schedule-H accordingly, to which the EPCC raised no objections and instead submitted Schedule-H vide letter dated 22.03.2024, expressly accepting the modified Contract Price for the finalised balance scope of work.
- b. As per the procedure under Clause 1.6 of Schedule-A, quantities were adjusted to account for works executed by the previous contractor during the bidding period and for any post-bid damages, and the completed quantities were deducted item-wise from the total contractual scope to arrive at the balance quantities. Thereafter, the EPCC, on its own initiative, vide letter dated 19.02.2025, revised the quantities in Schedule-H without revising the

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item rates, by rectifying the arithmetic errors and reconciliation of the quantities, which was accepted and used solely for interim payment purposes. Subsequently, despite having itself revised the quantities, the EPCC raised claims seeking enhancement of rates on account of quantity variation. The matter was examined by the AE, who vide letter dated 27.01.2026 communicated detailed calculations with annexures, following the same methodology earlier intimated to and accepted by the EPCC.

- c. The recalculation establishes that the revised EPCC Contract Price works out to Rs. 93,09,29,627.40 as against the accepted price of Rs. 93,26,36,660.23, resulting in a recoverable amount of Rs. 17,07,032.83, which is liable to be effected accordingly. The EPCC's claim for enhancement of rates is incorrect and contractually untenable. Further, for items such as crash barriers, MBCB, RE panel casting and erection, and crash barriers over VUPs—where designs are prepared and finalised by the EPCC—the Contract Price is design-linked and fixed, and is not dependent on quantities indicated in Schedule-H, which serve only for interim payments in terms of Clauses 10.1(iv) of the EPC CA. Accordingly, the EPCC's claims are inadmissible, and the recoverable amount of Rs. 17,07,032.83 stands established as per AE's letter dated 27.01.2026.

As regards the letter dated 19.02.2025, the absence of the EPCC from the record, as asserted in the EPCC's letter dated 12.02.2026 vide para 64 to 67, is factually incorrect, as the same letter exists in the Government's e-office records, duly signed by the EPCC's Authorised signatory. It is also clarified that the same Schedule H in the SPSs/PCs submitted by the EPCC thereafter exists.

27. **Issue of the allegedly withholding of Rs. 3 Crore, for works done in March 2024 during visit of Hon'ble PM:** The matter has been examined by the AE on multiple occasions and it has been categorically intimated that maintenance works done by the EPCC under obligations of Clause 10.4 (i) of the EPC CA, cannot be claimed as additional works beyond the Scope under Article 13 of the CA. Further, the latest letter of the EPCC dated 10.11.2025 has been appropriately replied to by the AE vide letter dated 20.11.2025. Thus, the matter stands disposed of.

28. The amounts withheld by the Authority are a direct consequence of milestone achievement failures attributable to the EPCC's own defaults, which were duly communicated through multiple notices relating to slow progress, poor planning, inadequate resource mobilisation, and issuance of cure period notices. The Authority formally intimated milestone lapses and rejected the revised work programme vide letter dated 07.06.2024, while imposing damages at the rate of 0.05% per day in accordance with Clauses 10.3(ii) and 10.3(iii) of the EPC Contract Agreement. Subsequently, EPCC was placed under a cure period for continuing defaults, and damages amounting to Rs. 9.33 crore were intimated vide Authority's letter dated 23.04.2025, with clear intimation that recovery would be made from payments and securities in case of non-remittance by EPCC. Although the EPCC has disputed the same, the Authority maintains that such damages have been levied in accordance with the Contract

29. The EPCC's contention that damages and withholdings are unjustified is untenable, as no valid Extension of Time has been granted. The AE evaluated the EPCC's EOT claim of 1857 days (25.09.2025) strictly in accordance with Clause 10.5 of the EPC Agreement and determined only 13 days as admissible, which was duly communicated to EPCC vide letter dated 09.10.2025. Accordingly, the withheld amounts cannot be released. Further, all deductions have been effected strictly in terms of the EPC Contract Agreement, including Clauses 10.3 and 10.6 (milestone shortfalls), 19.5(iv) (incomplete items), and 22.1

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(maintenance and rectification), and arise solely from the EPCC's defaults and non-compliances, and not from any arbitrary or non-contractual action by the Authority.

30. It is further placed on record that the balance works which were tendered to carry out on the risk & cost of the EPCC, after due Notice issued to EPCC vide letter dated 20.09.2025, the bids in respect of these works were cancelled due to high bids in the 1<sup>st</sup> call. Meanwhile, the balance works were further updated by AE, as intimated to EPCC vide letter no. 548 dated 06.01.2026, for Rs. 15.25 Crore and accordingly, the bids for the balance works, with an estimated cost of the balance works of Rs. 15.25 crore, were invited by NHIDCL HQ on 05.01.2026. Based on the rates quoted by the L-1 bidder, the market price of the balance works comes to Rs. 14.643 crore, thus with a shortfall of Rs. 3.823 crore. Besides, a balanced LD amount of Rs. 4.46 crores (Rs. 9.33 crore-4.87 crore) is to be recovered. Besides, all the losses of the Authority due to the delay by the EPCC are yet to be determined and quantified. The tentative recoverable amount from the EPCC as of the date is as follows:

Sl. No.	Particular	Amount to be recovered (Rs. In Cr)	Remarks
1	Recovery of Liquidated Damages @ 10% of Contract price=9.33 crore, as per Cl. 10.3(ii) and 10.3 (iii) of EPC CA	4.46 crore	As Rs. 4.87 crore has already been recovered
2	Market prices of the balance work execution as per open and competitive bidding in the 2 <sup>nd</sup> call, to be recovered as a loss from EPCC, under 23.6 (i) (a) of EPC CA	3.823 Crore	As the market price is Rs. 14.643 crore against the balance values in the Contract of Rs. 11.41 Crore
3	Recovery due to reconciliation of quantities as per Cl. 1.6 of Schedule A of EPC CA, AE's letter dated 27.01.2026	0.1707 Crore	The detailed calculations have been notified to EPCC vide AE's letter dated 27.01.2026.
<b>Total</b>		<b>7.867 Crore</b>	

31. The allegations of the EPCC made vide para 1 to 3 of the EPCC's letter dated 12.02.2026, are denied to the extent they contend the facts of the Notice for Intention to terminate dated 29.01.2026, as the allegations are baseless and devoid of facts, and found contractually untenable.

32. EPCC vide para 4 to 6 of the letter dated 12.02.2026, claimed and alleged the withholding of Rs. 38.77 crore by the Authority. The breakup of the claim of the EPCC of Rs. 34.83 Crore can be found in EPCC's letter dated 16.10.2025, addressed to MD, NHIDCL. The claim of the EPCC has no contractual basis and is dealt with in detail, and a reply to the same has been furnished vide Authority's letter no. 7974 dated 27.01.2026. It has been clearly brought out under the letter dated 27.01.2026 that none of the claimed withheld stands valid in view of the CA.

33. The assertion of the EPCC, vide para 7 & 8 of the letter dated 12.02.2026, about the conciliation meeting dated 13.11.2025, and assurance of release of withheld amounts to restore the financial equilibrium, etc., lacks substantiating documents and Minutes of the meeting; accordingly, the said assertions are unsubstantiated and rejected.

34. The EPCC has attempted to shift the blame for its failure in managing its affairs to the Authority for failure in managing its affairs with vendors and suppliers, under the ambit of Article 3 of the EPC CA, vide para 9 to 11 of the letter dated 12.02.2026. The Contractor's claim is contractually untenable. The reported threats and disruptions are allegedly from the Contractor's own vendors and private entities with whom the Contractor has commercial relationships—these are not "encumbrances" or "barriers" within the meaning of Articles 3 and 8, which relate to legal impediments on the Site itself, not the Contractor's commercial disputes or labour/vendor management issues. Clause 4.2(iv) explicitly states that "*the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement*" and that "*no default under any such agreement shall excuse the Contractor from its obligations.*" The Contractor's inability to manage its own vendors, suppliers, and commercial relationships falls squarely within Clause 4.12 (Sufficiency of Contract Price covering "all risks") and Clause 4.1(vii)(c) (maintaining "*harmony and good industrial relations among personnel employed by it or its Sub-contractors*"). Even if these were third-party encroachments unrelated to the Contractor's vendors, Clause 8.5 mandates that "*the Contractor shall maintain a round-the-clock vigil over the Site*" and "*undertake removal at its own cost and expenses.*" The Authority's obligations under Articles 3 and 8 are limited to providing the Site free from legal encumbrances at initial handover, not managing the Contractor's vendor disputes, commercial threats, or ensuring harmony in the Contractor's supply chain. Articles 3 and 8 simply do not contemplate or address disputes between the Contractor and private parties arising from the Contractor's own commercial arrangements. Further, the allegation of a pending IPC with the Authority is incorrect and unsubstantiated.

35. In view of the foregoing, the Authority is satisfied that, in its assessment based on the records and correspondence referred to herein, the EPC Contractor has committed persistent and fundamental breaches of the Contract Agreement, inter alia, falling within the ambit of Article 23.1(c), 23.1(d), 23.1(e), 23.1(f), 23.1(g), and 23.1(p), including failure to achieve Project Milestones, abandonment and manifest intention to abandon the Works as recorded by the AE, failure to proceed with due diligence, non-completion within the Scheduled Completion Date, failure to rectify defects having a Material Adverse Effect, and failure to fulfil obligations for which termination is expressly provided:

*Article 23.1(c): "the Contractor does not achieve the latest outstanding Project Milestone 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;*

*Article 23.1(d): "the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority;*

*Article 23.1(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 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority's Engineer;*

*Article 23.1(f): "the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;*

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Article 23.1(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;

Article 23.1(p): "the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;"

36. The Authority, vide Notice of Intention to Terminate dated 29.01.2026, called upon the EPC Contractor to submit its representation within fifteen (15) days. The EPC Contractor's representation dated 12.02.2026 has been examined and is found to be wholly unsatisfactory and fails to remedy the material breaches enumerated in the said Notice as seen above. The defaults committed by the EPC Contractor constitute independent and severable grounds for termination under Articles 23.1(c), 23.1(d), 23.1(e), 23.1(f), 23.1(g), and 23.1(p) of the EPC Contract Agreement, each of which independently justifies termination. Accordingly, the Authority has decided to terminate the EPC Contract with immediate effect, in exercise of its rights under Article 23.1 of the Contract Agreement and in accordance with applicable law.

37. In exercise of powers under Article 23.1 of the EPC Contract Agreement, the Authority hereby terminates the EPC Contract dated 07.02.2024 with M/s Binni Construction with effect from the date of issue of this Notice. The provisions of Article 23.4 shall become operative immediately. The EPC Contractor is directed to cease all Works forthwith and vacate the site within fifteen (15) days from the date of this Notice.

38. This Termination Notice is issued under Article 23.1 of the Contract Agreement and is without prejudice to all rights, remedies, and claims available to the Authority, including claims for damages, liquidated damages, encashment of Performance Security and Bank Guarantees, risk-and-cost recoveries, and indemnities, all of which are expressly reserved. The Authority further reserves all its rights under Sections 55, 73 and 74 of the Indian Contract Act, 1872, and any other applicable law. Nothing herein shall be construed as a waiver of any default or remedy available to the Authority under the Contract or applicable law. Upon termination, the Authority shall be entitled to complete the balance of works through alternate arrangements at the risk and cost of the EPC Contractor in accordance with the Contract Agreement. All costs, losses, damages, and expenses incurred by the Authority in completing the works, including the difference in cost, shall be recovered from the EPC Contractor.

Encl: As stated above.

Yours sincerely,



(Samar Bahadur Singh)  
Executive Director (Tech.)

Copy to:

- (i) PS to MD-NHIDCL: for information please.
- (ii) PS to Director (Tech.)-I: for information please.
- (iii) ED(P)-RO Assam: for needful please.
- (iv) GM(P)-PMU Dibrugarh: for needful please.

Sorhat