

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

EXECUTION APPLICATION NO. 32 OF 2016

IN

ORIGINAL APPLICATION NO.295 OF 2016

In the matter of:

Amresh Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

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(Amarendra Kumar, CGM(T))

Respondent No. 2 /NHAI

THROUGH

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NEW DELHI

DATED: 01.10.2021

1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

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**COMPLIANCE REPORT OF NHAI IN TERMS OF THE ORDER
DATED 28.06.2021 PASSED BY THIS HON'BLE TRIBUNAL**

- 1) That the undersigned being the Chief-General Manager (T), Jammu & Kashmir is well acquainted with the facts of the present case and as such is competent and is duly authorized to file the present Compliance Report.
- 2) That the present Compliance Report is being filed in compliance of the directions of this Hon'ble Tribunal in its order dated 28.06.2021, whereby this Hon'ble Tribunal was pleased to direct to the Deponent to file its report regarding the Action taken against the errant contractors i.e. Respondent No. 5 & 6 and the Action Taken Report with respect to the issues highlighted in the Report filed by the Monitoring Committee.



- 3) That the Answering Respondent is a statutory body constituted under Section 3 of the National Highways Authority of India Act, 1988 for the purpose of development, management and maintenance of the National Highways or stretch thereof, vested in or entrusted to it by the Central Government. Pertinently, all the national highways vest with the Union of India and the NHAI acts as one of its executing agencies.
- 4) The Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall as may be specified in the notification be exercisable by any authority subordinate to the Central Government. The Stretch in question has been entrusted to NHAI being its executing agency.
- 5) That it is respectfully submitted, that the Answering Respondent has utmost concern about the environmental issues and adopts sufficient measures to ensure that the ecology and environment is preserved and protected while the infrastructure development projects are executed by it. It is further submitted that the Answering Respondent takes all steps to comply with the necessary requirements under the statutes and the rules and regulations made thereunder.
- 6) It is submitted that to comply with the orders passed by this Hon'ble Tribunal, the NHAI immediately came into action so that the remedial measures to strengthen, stabilize and rehabilitate the dumping sites can be taken in an eco-friendly manner in consultation with the experts. Upon receipt of the Order dated 28.06.2021 by the Project Implementation Unit ('PIU') at Ramban, the resources were mobilized to access and prepare an action plan for rehabilitation of the dumping sites. Extensive site visits were

conducted to assess the extent of work involved, the steps required to be taken for remediation/ rehabilitation efforts and its mode of execution. It is pertinent to mention that due to ongoing monsoon season it was very challenging to initiate any activity in this regard because, extent of impact and its mitigation measures requires quantization, process of removal, identification of disposal site and its transportation.

- 7) It is further submitted that the information gathered during such visits was analyzed by the Engineers at PIU-Ramban and at the RO-Jammu level and the engineering solutions were discussed to effectively implement the orders of this Hon'ble Tribunal. It was planned that stabilization of slope would be done by NHAI through the civil work as per relevant guidelines Indian Road Congress ('IRC') and thereafter, for the biological/bio-engineering stabilization services of the Respondent No. 04 as deposit work could be taken. Accordingly, upon completion of civil works like construction of gabion wall on the river bank considering the high flood level of the Chenab river by NHAI, services of the Respondent No. 04 i.e. the Forest and Ecology Department are proposed to be taken as deposit work, for planning, implementation and maintenance of biological/bio-engineering methods of stabilization of slope of dumping sites.
- 8) That the said proposal was received at the NHAI Head Quarters for consideration and approval. The proposal was deliberated at various levels and was approved keeping in mind the directions passed by the Hon'ble Tribunal to prevent, control and take remedial measure to strengthen, stabilize and rehabilitate the slopes of dumping sites.



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- 9) Accordingly, vide NIT no. NHAI/PIU Ramban/21-22/Muck Disposal/01 dated 27.09.2021, a tender was floated at the risk and cost of Respondent No. 05 & 06 for Rehabilitation, strengthening and stabilization of the dumping sites along the River Chenab or its tributaries with the following scope of work:
- a) Excavation, lifting of dumped muck from riverbank/ nallah either mechanically or manually upto required height and its disposal to the designated approved dumping sites;
 - b) Construction of site-specific Gabion Walls;
 - c) Providing and laying coir geotextile including turfing over dumped material in slopes along with hydroseeding.

A true copy of the NIT no. NHAI/PIU Ramban/21-22/Muck Disposal/01 dated 27.09.2021, is annexed herewith and marked as ANNEXURE - R2/1. (page No. 8-10)

- 10) That the last date of online submissions of the aforesaid bid is 12.10.2021. As per the Terms of the Tender, the bidders are required to submit their Technical and Financial Bids. The Technical bids would be opened on the same day itself i.e. 12.10.2021 and would be evaluated by the Tender Evaluation Committee within the next two-three working days. Once, the Technical bids are evaluated, the results would be uploaded on the Tender portal for a weeks' time for receiving and considering the objections, if any. Thereafter, the Financial bids of Technically qualified bidders would be opened on or around 22.10.2021 and the work would be awarded to the successful bidder by 1st week of November 2021.
- 11) In addition to the aforesaid, it is most humbly and respectfully submitted that the present project was/is being executed by Respondent No. 5 i.e. M/s Gammon Engineers and Contractors



Pvt. Ltd. and Respondent No. 6 i.e. M/s Hindustan Construction Company Ltd. There have been various deficiencies in the work executed by these erred Contractors i.e. Respondent No. 5 & 6, and some of which were also highlighted in various past orders of this Hon'ble Tribunal. The answering Respondent from time to time has issued directions to these erred Contractors, including but not limited to issuance of cure period notices under the Contract. It is humbly submitted that in order to prevent the excavated material from overflowing into the rivers, the answering Respondent has been constantly following up with the Respondent No. 05 & 06 to ensure that precautionary measures such as water sprinkling, construction of gabion/stone toe walls etc. It is submitted that as some of these correspondences forms part and parcel of the record before this Hon'ble Tribunal, the same are not repeated herein for the sake of brevity.

- 12) That due to willful in-actions on part of Respondent No. 5 & 6, the Answering Respondent was constrained to take stringent actions against the Respondents. NHAI was left with no other option but to issue the notice reflecting its intention to terminate the contract entered into with Respondent No. 6 vide letter no. NHAI/RO-Jammu/2015/11071/R-B/442 dated 12.06.2021. However, the reply of the Respondent No. 06 was completely devoid of any reasons and answers to the issues raised in the notice but merely brushed aside the issues raised by the Authority. The Respondent No. 06 neither provided any meaningful reasoning nor took any serious steps to cure the defaults which were evident from the condition prevailing at site. In view of the same, NHAI was constrained to Terminate the Contract vide its letter bearing No. NHAI/11019/22/2011/RB dated 23.09.2021.

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A copy of the Termination notice issued to Respondent No. 6 dated 23.09.2021 bearing No. NHAI/11019/22/2011/RB is annexed herewith and marked as "Annexure-R2/2". (page No 11-15)

- 13) Similarly, in the case of Respondent No. 05, due to continuous failures of the Respondent No. 05, NHAI was left with no other option but to issue the notice reflecting its intention to terminate the contract executed between NHAI and the Respondent No. 5 vide letter no. NHAI/RO-Jammu/2015/11072/U-R/502 dated 12.06.2021. The Respondent No. 05 has submitted its reply to the aforementioned notice and the same is under consideration by NHAI, to take appropriate actions for the defaults of the Respondent No. 05.

A copy of the notice reflecting NHAI's Intension to Terminate the Contract issued to Respondent No. 5 issued on dated 12.06.2021 bearing No. NHAI/RO-Jammu/2015/11072/U-R/502 is annexed herewith and marked as "Annexure-R2/3". (page No. 16-21)

- 14) That it is pertinent to submit that NHAI has already floated the tenders inviting bids for the balance works which were/are being done by the Respondent No. 05 & 06. The last date of submissions of bids for the balance works which were being done by the Respondent No. 06 was 30.09.2021 and the last of submissions of bids for the balance works being done by Respondent No. 05 would be freezed once the decision on the Intention to Terminate notice issued to Respondent No. 05 is taken.
- 15) That the TAC of the Respondent No. 07 had prepared a report on the assessment of EMP and Environmental Compensation of NH-44, Ramban and has recommended levy of Environmental Compensation amounting to Rs. 2.58 Cr. On the basis of the said

report, the Respondent No 07 vide its order dated 08.09.2021 has directed NHAI to deposit the said Compensation amount within 45 days of the date of the Order. It is respectfully submitted that although NHAI had serious reservations on the accuracy of data collected, mode & manner of arriving at the conclusions, quantum of EMP & Environment Compensation imposed, etc. in the said report and order dated 08.09.2021, however, in the interest of justice NHAI has already deposited the said computed Environmental Compensation of Rs. 2.58 Cr, with the Respondent No. 07, at the risk and costs of Respondent No. 05 and 06. NHAI reserves its right to file appropriate legal response/recourse to the said report of TAC and order dated 08.09.2021 passed by Respondent No 07.

- 16) That it is respectfully submitted that the answering Respondent is committed to ensure control any adverse impact on the flow of Chenab River and equally responsible to strengthen, stabilize and rehabilitate the dumping sites as per the best engineering and eco-friendly interventions.
- 17) That the present Compliance Report may kindly be taken on record.
- 18) That the contents of the present report are true and correct.


(Amarendra Kumar, CGM(T))

Respondent No. 2 /NHAI

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India
(सड़क परिवहन और राजमार्ग मंत्रालय)
(Ministry of Road Transport & Highways)

ऑफिस-6, सेक्टर-10, द्वारका, नई दिल्ली-75

G - 5 & 6, Sector - 10, Dwarka, New Delhi - 75

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NEW DELHI - 110 014

Ph: 24371038/39/40

E-mail: delhi@mvkini.com

NEW DELHI

DATED: 01.10.2021


2849/20

Notice Inviting Tender

8

**(National Competitive Bidding through e-Tendering mode only)
NIT no. NHAI/PIU Ramban/21-22/Muck Disposal/01**

The National Highways Authority of India (NHAI) hereby invites bid through e-tendering from experienced firms/ organizations for short-term improvement and routine maintenance contracts for the following sections of the National Highways :-

Sl. No.	Section	NH-No.	Length (in km.)	UT	Approximate Estimated Cost (Rs.)
1.	Lifting of extra muck dumped between Udhampur to Ramban (NH-44) along the bed of Chenab and its tributaries and dispose the same in designated dumping sites and slope protection through crates and hydro seeding/coir based turfing etc.	44	79 Kms	Jammu & Kashmir	20,22,47,864 (Including all Applicable Taxes)

Cost of Bid Documents (Non-Refundable): Rs. 50,000/- including taxes (through online payment in favour of National Highways Authority of India, Canara Bank, A/c no. 2975201000220, IFSC Code: CNRB0002975)

The preliminary requirements (detailed requirements are given in the Bid Document) of bidding firm / contractor for above packages are mentioned as under:

Bid Security (Rs. lakhs)	Average Turn-over during last 3 years (Rs. lakhs)	Work of similar nature during last 7 years (Rs. lakhs)	Period
Bid Security Declaration	606.74	Single work of Rs 1618 Lakhs OR Two works of Rs 1011 Lakhs	6 Months

		OR Three works of Rs 809 Lakhs	
--	--	--	--

It is mandatory for all the bidders to have class-III Digital Signature Certificate **(With Both DSC Components, i.e. Signing & Encryption in the name of authorized signatory (who will sign the Bid))** from any of the licensed Certifying Agency (Bidders can see the list of licensed CA's from the link www.cca.gov.in to participate in e-tendering of NHAI.

To participate in the e-bid, it is mandatory for the Applicants to get themselves registered with the NHAI e-Tendering Portal (<https://etenders.gov.in>). (For any clarifications, e-mail to support-eproc@nic.in)

The last date submission of online bid is **12.10.2021 up to 1400 hrs** (as mentioned on the e-portal only) ("Bid Due Date"). The detailed tender document can be viewed/downloaded/purchased from the website <https://etenders.gov.in> or <http://www.nhai.gov.in> from **27.09.2021 to 12.10.2021 up to 1400 hrs**

The complete Bid Document can be downloaded from the NHAI e-tendering portal free of cost. The amendments /clarifications to the bid document if any will be hosted on the above website.

The bid should be submitted online in the prescribed format given in the website. No other mode of submission is acceptable.

The authorized signatory holding Power of Attorney shall only be the Digital Signatory. In case authorized signatory holding Power of Attorney and Digital Signatory are not the same, the bid shall be considered nonresponsive.

The last date of submission of online Bid (refer Cl. 12.2) is **12.10.2021 up to 1400 hrs** (as mentioned on the e-portal only). The bids would be opened on **13.10.2021 at 1430 hrs** online at Camp Office PIU Ramban, H.no 315/1 Channi Himmat Jammu-180015 representatives of the bidders (maximum of two) who choose to attend, may attend the online opening of the bids at Camp Office PIU Ramban on the date and time as mentioned above. However, such representatives shall be allowed to attend the opening of the bids only if they

produce letter of authority on the letterhead of the bidder, at the time of opening of bids as mentioned above.

For any clarification, the office of the undersigned may be contacted.

PD PIU Ramban

National Highways Authority of india

Camp Office-H.no 315/1 Channi Himmat Jammu -180015

E-mail: piuramban@nhai.org, piuramban@gmail.com



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

ANNEXURE-R2/2

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

11

NHAI/11019/22/2011/RB

Date: 23.09.2021

To,

The Authorized Signatory
M/s Hindustan Construction Company Ltd.
Hincon House, Lal Bahadur Shastri Marg, Vikrohli(W)
Mumbai-400083, Maharashtra
Email: contactus@hccindia.com;
isaac.joseph@hccindia.com; contracts.nh44@hccindia.com

Sub: Four laning of Ramban to Banihal Section of NH-1A from KM 151.00 to Km 187.00 in the State of Jammu & Kashmir (Package no NHDP-Phase-II/BOT/III/J&K-Termination of Contract Agreement dated 13.10.2015 -Reg

Ref: (i) Authority's Cure Period Notice dated 04.05.2018
(ii) Contractor's reply dated 07.06.2018 to the Cure Period Notice
(iii) Authority's letter dated 21.06.2019 retaining the Cure Period Notice
(iv) Authority's letters dated 16.07.2020, 27.11.2020 & 19.04.2021 regarding no works on certain chainages/ realignment of existing highway
(v) Authority's letter dated 12.06.2021- slow progress
(vi) Authority's Intention to Terminate letter No. NHAI/RO-Jammu/2015/11071/R-B/442 dated 12.06.2021-
(vii) EPC Contractor M/s HCC letter No. HCC/RBRP/2020-21/3760 dated 21.06.2021

Sir,

The National Highways Authority of India is in receipt of your reply dated 21.06.2021 in response to the Intention to Terminate Notice dated 12.06.2021 issued by the Authority referred to at Serial No.(v) above. The reply sent by you vide your communication dated 21.06.2021 has been examined by the Authority and it has been found that you the Contractor instead of curing the defaults highlighted in the Cure period notice and reiterated by way of several correspondences issued by the Authority and Engineer has merely indulged in unnecessary verbosity and have failed to answer in any meaningful way the blatant violations of the provisions of the Contract Agreement and applicable law committed by the Contractor.

2. The contents of the Cure Period Notice dated 04.05.2018 and Intention to Terminate notice dated 12.06.2021 along with annexures appended thereto issued to the Contractor are to be read as part and parcel of the present notice which are not being repeated herein for the sake of brevity. Despite being put to repeated notices to cure the breaches of the terms of the Contract Agreement especially in relation to completion of project highway as well as taking up the maintenance of the project highway, the Contractor has failed to cure such breaches which are subsisting even till today.

3. The strategic and national importance of the Project Highway is fully within the knowledge of the Contractor as it is the only connecting link between Jammu to Srinagar and further to Ladakh. The speedy completion of the project highway is of paramount importance in view of the national security concerns abounding the region in which the highway is located. The Contractor has not only inordinately delayed the completion of the project highway but also failed to adequately maintain the existing highway which has resulted in converting the project highway to one way road for transit of commercial vehicles and inordinately delaying the crucial supply of essentials to the army guarding the borders of our country. Due to continuous disruption on the Project Highway owing to erratic and unscientific manner of execution of works, the transportation on the National Highway is severely impacted, besides resulting in loss of life and property.

4. It may be noted that the Authority has been constrained to issue instant Termination Notice primarily on account of the following reasons, apart from other defaults of the Contractor as recited in the Cure Period Notice and Intention to Terminate notice which are continuing and subsists till date:

- (i) Slow progress of works which is clearly suggestive of Contractor's intention to abdicate the completion of works in a time bound manner (**Annex-1**). Despite after lapse of more than 68 months time period from the appointed date, the present progress of project is still dismal more prominently of critical structures / bridges. This is in violation of Clause 8.3.2 read with Schedule J of the Contract.
- (ii) Gross violation of terms of the Contract Agreement viz. Clause 3.1.1, 10.3, 14, read with Schedule E of the Contract relating to maintenance of the Project Highway including the part of existing highway (**Annex-2**).
- (iii) Negligent approach towards safety of the road users which has resulted in frequent accidents at Project Site, the main reason for which is complete lack of maintenance. This is in violation of Clause 3.1.1, 10, 14, 16 read with Schedule H of the Contract.

5. The Contractor's reply dated 21.06.2021 is completely devoid of reasons and answers to the issues raised in the Notice of Intention to Terminate. The crucial issues raised in the Notice of Intention to Terminate particularly those which related to non-maintenance of the road endangering the safety and security of the users, as well as national security by leading to delays in army supplies, have not been dealt with at all. The Contractor has, without explaining its conduct for each of the above defaults, has merely brushed aside the issues raised by the Authority and has neither provided any meaningful reasoning nor taken any serious steps to cure the defaults which are evident from the condition prevailing at Site till date.

6. The reasoning for the slow progress of works set out in the Contractor's Reply dated 21.06.2021 at Para 4 is without any basis. None of the reasons as stated in reply to para 4 are hindering the execution of works on available fronts since the beginning of the construction period and there is no reason forthcoming from the

bare reading of the communication dated 21.06.2021 as to why the works on available work fronts were not completed within the stipulated period and extension thereof.

7. It is reiterated that as per the Contract, the work was to be completed before 1278th day from the Appointed Date i.e., 28.12.2015. Accordingly, Scheduled Completion date was determined as 26.06.2019, however, in complete disregard to the completion period, even after lapse of more than 68 months after Appointed Date, the work has not been completed at site and Contractor have failed to achieve the Project Milestones as per Schedule-J of Contract Agreement even after considering the effect of hindrances and other delays.

8. Moreover, the Contractor has also failed to achieve targets set by itself for June, July & August 2021 mainly due to inadequate deployment of effective/skilled manpower, complete lack of experience, poor site management, lack of cash flow and non-deployment of adequate resources etc. even as on today the physical progress of the work is still dismal as against the progress assured by the Contractor on whose behest the Authority had kept further action in pursuance to the cure period notice in abeyance for a period of six months. Despite granting the contractor ample opportunities to expedite the progress of works, the same have yielded no positive result on site. Instead of performing work on ground, the Contractor has indulged in protected communications in order to wriggle out of its contractual commitments. That the Contractor's defaults vis-à-vis delay in timely completion of the project and non-maintenance of the same has led to the deplorable condition of the site, which can be ascertained from the photographs which are annexed herewith as **Annex-3**.

9. As regards failure to maintain the Project Highway, the Contractor has attempted to twist and turn, otherwise unambiguous and clear terms of the Contract which cast an absolute obligation on the Contractor to maintain the Project Highway including the existing road traffic worthy and user friendly at all times during construction period. As has been repeated by the Authority time and again, the Contractor has failed to maintain the existing lane of Project Highway. In fact, the Authority has received several complaints from the commuters, public representatives and local bodies regarding the shoddy maintenance of the stretch under the Contract. Thus, no amount of longwinded communication would overturn the factual position as is appearing in the photographs of the Site which conclusively establish that there is nil maintenance of the Project Highway. The non-maintenance has led to stalling of the traffic at the Project Highway so much as that for travelling the stretch of Project Highway i.e. approximately 36 Kms, a commuter takes more than 3-4 hours, whereas in transiting the remaining Jammu-Srinagar Highway for a length of 190 Km, time consumed barely is 3-4 hours.

10. Furthermore, unscientific and unconventional hill cutting by the Contractor not only compromised the service level and safety of road users but also resulted in blockage of strategically important National Highway connecting Kashmir valley and

Ladakh. Despite repeated request by the Authority to comply with its maintenance obligations as per Contract, the contractor has failed to maintain the same. That because of Contractor's misrepresentation and breach in fulfillment of Contractor's various obligation and undertakings, the interest of Authority has been seriously prejudiced beside bringing disrepute to the organization. Nevertheless, Contractor's acts of omission and commission have led to deterioration of the National Highway causing anguish to the public in general and exposing the users to severe risk of life. It may not be out of place to mention here the main reason for risk to commuters is development of new landslide zones due to unscientific slope cutting by contractor & delay in slope protection works at vulnerable points. Due to continuous failure of the Contractor on this account, the maintenance works have been got executed at the risk and cost of the Contractor by the Authority being constrained by gross negligence and inactions at the end of the Contractor. For the purposes of record, it is stated that part maintenance which the Contractor avoided to take up for flimsy reasons has been successfully completed by the Authority, albeit through a third party.

11. Pertinently, during the site inspections for the work done, the Authority had notified to the Contractor defects in executed work and issued notices to maintain quality standards as per Contract specifications. However, despite repetitive requests, Non Conformity Reports and Show Cause Notices, the Contractor has abysmally failed to maintain the quality standards as per Contract Provisions and Good Industry Practices. As on date Contractor has failed to rectify the defects so observed and communicated. Also, various NCR's issued by AE has not been closed by the contractor even after the lapse of sufficient time.

12. The Contractor is required to do due diligence and intensive survey before even casting its bid and to make itself fully familiar to the terrain and risks and hazards that may arise in executing the works as indicated in the Schedules to the Contract Agreement. It may be noted that apart from the DPR Consultant, the Contractor is equally responsible for not highlighting the issues in the DPR prior to the bidding in terms of the requirement of the RFP and the Contract. Be that as it may, even after descoping of the work of approximately 16 Kms i.e. the re-aligned portion, the Contractor has failed to complete the balance works within the stipulated period as provided in the Contract, despite there being no impediment/hindrance. In this behalf, it is to be noted that the Contractor itself agreed to revision in DPR and gave its no objection to the same. Having accepted a particular decision, it cannot renege from the same and portray the same as the reason for overall and cascading delay in completion of work.

13. From the above facts and situation of work at Site which has been confirmed by the Engineer through various reports/communications/MPRs, the Authority is satisfied that the continuation of the Contract is not in the best interest of the Project of such national importance.



14. In nutshell, the Authority having examined the representation dated 21.06.2021 received from the Contractor and critically examined the same vis-à-vis situation prevailing at Site as well as taking into consideration the observations/point wise reply of the Engineer as communicated vide AE letter no 2552 dated 08.07.2021 (**Annex-4**) has found it to be devoid of any merit, unsubstantiated, contrary to the factual position and provisions of the Contract and hence, the same is not tenable. Moreover, enough time was given to you from the intention to terminate notice dated 12.06.2021, but unfortunately nothing has been done by you in the interregnum to cure the various defects and also failed to meet the timelines. Thus, the Authority concludes that the Contractor evidently has breached the terms and conditions of the Contract and forced the NHAI/Authority to take action under clause 23.1.2 of Contract. Since the Contractor has failed to maintain the requisite progress, take up the work in right earnest, maintain the project highway in a traffic worthy manner, take requisite steps towards user safety and expose the users to severe risk of life and property, the Authority has after considering the reply of the Contractor and his performance at site, has completely lost faith in the ability of the Contractor to complete the balance work of the Project Highway and hence, decided to terminate the Contract by way of the present notice with immediate effect.

15. In view of the aforesaid facts and circumstances and in consideration of the abnormally dismal rate of progress of the project/ non maintenance of Project Highway/poor quality of work executed at site and non-compliance of environmental mitigation plan, it is established, apparent and evident that the Contractor neither has the intention nor the resources to perform its obligations under the Contract and is in breach of its obligations set forth under Clause 3.1.2, Clause 23.1.1 (c), (d), (e), (f), (h) & (r) of the Contract Agreement. Hence, in terms of Clause 23.1.2 of Contract the Authority hereby terminates the Contract Agreement dated 13.10.2015 signed with M/s Hindustan Construction Company Ltd. for execution of the subject referred project.

16. This termination is issued on account Contractor's default and the Authority reserves its right to claim any sum/damages from the contractor as may be permissible in law along with interest in accordance with law.

17. This termination is issued without prejudice to any other right or remedy available with the Authority under the Contract and / or applicable law.

Yours faithfully,

Encl: as above


(Virender Sambyal)
General Manager (T) J&K/HP

Copy to:

- (i) RO Jammu
- (ii) PD PIU Ramban



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
NATIONAL HIGHWAYS AUTHORITY OF INDIA

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार
(Ministry of Road Transport and Highways, Govt. of India)
क्षेत्रीय कार्यालय, जम्मू-मकान 315, द्वितीय तल, सेक्टर-1 छन्नी हिम्मत।
Regional Office, Jammu - House No.315, 2nd Floor Sector -1, Channi Himmat.
ई-मेल :- rojammu@nhai.org

ANNEXURE-R2/3



BHARATMALA
ROAD TO PROSPERITY

16

NHAI/RO-Jammu/2015/11072/U-R/502

12.06.2021

To,

Authorized Signatory

M/S Gammon Engineers and Contractors Pvt. Ltd.

Gammon House,
Veer Savarkar Marg,
Prabhadevi, Mumbai-400025

Sub: Four laning of Udhampur Ramban Section of NH-1A from Km 67.000 to Km 89.000 and Km 130.000 to Km 151.000 on EPC mode in the State of J&K -- **Intention to Termination Notice under Clause 23.1.2 of Article 23 of the Contract Agreement.**

Sir,

1. The National Highway Authority of India has entered into a Contract Agreement (dated 06.10.2015) with M/s Gammon India Limited (now **M/S Gammon Engineers and Contractors Pvt. Ltd**) for 'Four-Laning of Udhampur-Ramban-Section of NH-1A (now NH-44) from Km. 67.00 to Km. 89.00, Km. 130.00 to Km. 151.00 on EPC Mode in the state of Jammu & Kashmir.
2. The Construction of Udhampur – Ramban road awarded to EPC Contractor has 28.12.2015 as Appointed Date with completion period of 1095 days (27.12.2018 as date of completion).
3. That as per the unambiguous and unequivocal terms of the Contract Agreement the Contractor was to, *Inter alia*, among other things perform the following obligations:
 - (i) According to **Clause 3.1.1 of the Article 3** (Obligations of the Contractor) of the Contract Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction, and maintenance of the Project Highway and observe, fulfill, comply with and perform all its obligations set out in the Contract Agreement or arising hereunder.
 - (ii) Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement; **{CA Clause 3.1.7(e)}**
 - (iii) Not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others; **{CA Clause 3.1.7(j)}**



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सडक परिवहन और राजमार्ग मंत्रालय, भारत सरकार
(Ministry of Road Transport and Highways, Govt. of India)
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- (iv) According to **Clause 8.3.2**, the Contractor is under an obligation to complete all works on the site for which Right of Way is granted within 90 (ninety) days of the Appointed Date, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date.
- (v) The 1095 days (One thousand ninety five) days from the Appointed Date shall be the scheduled completion date and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof **(Schedule-J)**
4. Despite the aforesaid clear and unequivocal terms of the Contract Agreement and repeated reminders by the Authority and the Authority's Engineer, the Contractor has miserably failed to perform its obligations under the Contract Agreement, causing inordinate delay in the progress of the project.
5. The progress of the works is slow and is in complete disregard to the commitments made by EPC Contractor in different meetings with top officials of NHAI. The slow progress is despite the availability of unencumbered land of **98.84%** (as on date) for the project. Due to negligence displayed by the Contractor, the Authority & Authority's Engineer have been expressing severe concern over non-fulfillment of commitments made by the Contractor to expedite the construction of the project highway. (refer **Annexure-I** for list of letters on slow progress).
6. Authority Engineer has been flagging issue of slow progress in its Monthly Progress Reports for the attention of Contractor but it seems Contractor is not taking cognizance of the flagged points. Similarly PIU-Ramban vide its letter no NHAI-PIU-Ramban/2019/11001/5365 dated 01.06.2021 (**Annexure-II**) has in detail enumerated item wise delay of different components of work.
7. The Contractor has failed to achieve the required progress thereby breaching its various verbal and written commitments to expedite the progress of works. **The reason for the shortfall in the progress is mainly due to non-deployment of effective/skilled manpower, poor site management, lack of cash flow and inadequate deployment of the resources etc.**
8. Clause 10.4 of the Contract Agreement reads as under:

"During the construction period, the Contractor shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 10 (ten) days prior to the date of the Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor



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*may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Contractor only with the prior written approval of the Authority's Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the **Contractor shall at all times be responsible for ensuring safe operation of the Project Highway**. It is further agreed that in the event the Project includes construction of a bypass or tunnel and realignment of the existing carriageway, the Contractor shall maintain the existing highway in such sections until the new Works are open to traffic".*

However, continuing with its negligent approach towards completion/maintenance of the Project Highway and its gross negligence towards safety of the road users, the Contractor has till date continued to ignore the repeated reminders, requests and notices issued by the Authority and Authority's Engineer. Some of the relevant letters on deficiencies in maintenance are enumerated as **Annexure-III**.

10. The obligations of the Contractor relating to the safety requirements are stipulated in Schedule H under "Other Works 1.3.4 (x) of the CA" and as one of the obligations under Schedule E, the Contractor is required to make adequate arrangements for the safety of the workers and road users in accordance with IRC Guidelines for safety in construction zones. It has however consistently been communicated in the AE's Monthly Progress reports that adequate safety measures are not being deployed by the Contractor. This breach of the Contract by the Contractor has forced the Authority to issue letters to carry out maintenance and safety of highway. The routine maintenance work of the Project Highway has been neglected by the Contractor, which has been brought to the notice of Contractor by Authority/AE.
11. It is to further report that condition of the Project Highway is poor, resulting in safety hazards for the users and requested the Contractor to comply with its maintenance obligations as per CA. It was also pointed out that even after several reminders having been issued to the Contractor; it has not taken any remedy of measure to improve the deteriorating condition of the Project Highway. **Due to continuous failure of the Contractor on this account, the Authority was left with no other option but to initiate process for getting maintenance works at the risk and cost of the Contractor.**
12. That because of Contractor's misrepresentation and breach in fulfillment of



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Contractor's various obligation and undertakings, the interest of Authority has been seriously prejudiced beside bringing disrepute to the organization. Nevertheless, Contractor's acts of omission and commission have led to deterioration of the National Highway causing anguish to the public in general and exposing the users to severe risk of life. It may not be out of place to mention here the main reason for risk to commuters is development of new landslide zones due to unscientific slope cutting by contractor & delay in slope protection works at venerable points.

13. One of the Most Important Pillar of India economy is Transportation of India, but due to unscientific and unconventional excavation by EPC contractor which leads to creation of new slide zones, resulting in closure of only Highway connecting Srinagar and Ladakh to rest of India. This closure of Highway is having materially adverse impact of India transportation system vis-à-vis Indian economy.
14. Despite the established fact that the subject project is of strategic importance and any delay in completion of the project shall be detrimental to the long term national security of India especially in border area of Kashmir and Ladakh because the Highway frequently got closed due work being undertaken by EPC contractor due to which timely supplies to soldiers on border of Kashmir and Ladakh often got delayed, EPC Contractor is very casual about the timely completion of the Project.
15. Authority has gone out of way in mitigating different issues (as raised by Contractor in its different representations). Despite different concessions given to EPC Contractor there are no changes on ground zero for giving imputes to work progress. Some of the concessions from Authority are enumerated below:
 - (a) Approval of Rs 40.00 cr additional Mobilization Advance.
 - (b) Deferment of recovery of outstanding Mobilization Advance from time to time.
 - (c) Changes in Schedule: H (as per relief measures announced by MoRTH) which should have improved cash flow of Contractor
16. Contactor's Default's under article 23 of the contract agreement are enumerated herein below;
 - (a) **Contractor's default under clause 23.1.1 (f) of the Contract Agreement i.e., Failure to achieve Project Completion Date within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof.**



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- (b) **Contractor's default under clause 23.1.1 (e) of the Contract Agreement i.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 authorized by the Authority's Engineer.'*
- (c) **Contractor's default under clause 23.1.1 (d) of the Contract Agreement i.e.,** *'the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority'*
17. The Authority Engineer earlier has served Cure Period Notice vide letter no. S-PD-GECPL-QS-2562 dated 15.06.2019. However, it has been observed that despite lapse of nearly two years, you have not made any serious efforts to cure the Defaults as per details given below :
- (a) Delay in fulfilling Contractor's Obligations as per terms and conditions of the Contract Agreement as per Article 10 of the Contract Agreement.
- (b) Failure to achieve the requisite financial progress, which is a Default as per Clause 23.1.1(c).
- (c) Considering the present pace of works, there is every likelihood of missing the Project Completion Date. It is to highlight here that you have only achieved 18.55 % financial progress in a period of around 33 months (01.07.2019 to 31.05.2021) since Cure Period Notice vide AE's letter no. S-PD-GECPL-QS-2562 dated 15.06.2019 was issued to you (**Annexure-IV**). This itself shows your flippant approach towards the subject work (despite of continuous support from Authority & A.E) as such you have failed in your contractual obligations for which action under clause 23.1.2 of Contract Agreement is being initiated.
- (d) In view of the aforesaid facts and circumstances and in consideration of the *abnormally dismal rate of progress of the project/non maintenance of Project Highway*, it is presumed, apparent and evident that the Contractor neither has the intention nor the resources to perform its obligations under the Contract Agreement which is also established from the fact that the Contractor is not at present fully equipped in term of funds, manpower and machinery to comply with its obligations under the Contract Agreement.
18. It may not be out of place to mention here that Contractors default vis-à-vis delay in timely completion of the project may in long term cause Material



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Adverse Effect on the Project or on the Authority.

In view of above facts, as the Contractor's Defaults have been clearly established, the Authority hereby **issue the Notice to M/S Gammon Engineers and Contractors Pvt. Ltd. expressing its intention to issue 'Termination Notice' as per Clause 23.1.2 of Article 23 of the Contract Agreement** and grant 15 (fifteen) days to Contractor to make a representation thereof. Further it is added that Authority may after the expiry of 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

The said notice be issued without prejudice to any other rights or remedies which the Authority may have under the operating Contract Agreement.

(Rakesh Prakash Singh)
Regional Officer,
J&K, Jammu

Encls : As above

1. Sh. Virender Sambyal, General Manager (T) NHAI HQ for information
2. PD PIU Ramban for information
3. M/sTPF Getinsa-Euroestudios,S.L. in association with Segmental Consulting & Infrastructure Advisory (P) Ltd