

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

Commercial Appeal No.01 of 2023
&
Commercial Appeal No.02 of 2023

In Commercial Appeal No.01 of 2023

Hindustan Steelworks Construction Ltd (in short HSCL)
(A Government of India Undertaking), Tripura Unit, having its
local office at Jackson Gate Building (3rd Floor), Lenin Sarani,
Agartala, West Tripura-799001

..... Appellant-Defendant(s)

– V e r s u s –

1. **The State of Tripura**
(represented by the Secretary, PWD), Secretariat, Capital Complex,
P.O. Kunjaban, Agartala.
2. **Director, Urban Development Department,**
Government of Tripura, Agartala.

..... Respondent-Proforma Defendant(s)

3. **Shri Dilip Kumar Kar**
S/o Lt. Makhan Lal Kar, R/O- Agartala- Assam Road, Math
Chowmohani, P.O. Dhaleswar, P.S. East Agartala, Agartala, West
Tripura.

सत्यमेव जयते Respondent plaintiff(s)

In Commercial Appeal No.02 of 2023

Hindustan Steelworks Construction Ltd (in short HSCL)
(A Government of India Undertaking), Tripura Unit, having its
local office at Jackson Gate Building (3rd Floor), Lenin Sarani,
Agartala, West Tripura-799001

..... Appellant-Plaintiff (s)

– V e r s u s –

Shri Dilip Kumar Kar
S/o Lt. Makhan Lal Kar, R/O- Agartala- Assam Road, Math
Chowmohani, P.O. Dhaleswar, P.S. East Agartala, Agartala, West
Tripura

..... Respondent-Defendant (s)

For the Appellant(s)	:	Mr. B.N. Majumder, Sr. Adv. Mr. D.J. Saha, Adv. Mr. P.K. Chakraborty, Adv. Mr. B. Paul, Adv. Mr. S. Sarkar, Adv.				
For the Respondent(s)	:	Mr. D.K. Biswas, Sr. Adv. Mr. S.S. Debnath, Adv. Mr. K. De, Addl. G.A.				
Date of hearing	:	06.08.2025				
Date of delivery of Judgment & order	:	26.09.2025				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>✓</td><td></td></tr></table>	YES	NO	✓	
YES	NO					
✓						

HON’BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON’BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

(S. Datta Purkayastha, J.)

Both the appeals are being disposed of by this analogous judgment, as they arise out of the common judgment dated 16.02.2022 passed by the learned District Commercial Court, West Tripura, Agartala, in Commercial Suit No.6 of 2016 and Commercial Suit No.10 of 2016.

[2] The State of Tripura, through Public Works Department (PWD) took up the work for covering some drains within Agartala Municipal Corporation area and entrusted the said work to Hindustan Steelworks Construction Limited [*for short, ‘the HSCL’*]. The HSCL in turn, through Notice Inviting Tender [*for short, ‘the NIT’*], entrusted the work to Mr. Dilip Kumar Kar (*hereinafter referred to as ‘the contractor’*) vide NIT No. HSCL/Tripura/UDD/Central(Part-II)/2012-13/06 dated 03.11. 2012 (*hereinafter referred to as ‘Part II work’*) of an estimated cost of Rs.9,41,01,731/- and another NIT vide No. HSCL/Tripura/UDD/ Central(Part-

III)/2012-13/07 dated 20.11.2012 (*hereinafter referred to as 'Part-III work'*) of an estimated cost of Rs.8,70,36,452/-.

[3] The Standard Bid Document [*for short, 'SBD'*] containing terms and conditions of such works was published along with the NIT. Time of completion of both the works was 18 months. In both the matters, as per terms of SBD, the contractor shall begin the work after signing the formal agreement.

[4] Two agreements under the nomenclature 'INTEGRITY PACT-Central Drain' [Exbts.4 & 10 of Title Suit 11 of 2024, later on renumbered as Commercial Suit No.6 of 2016] were signed by both the parties which contain further terms and conditions relating to said contract works.

[5] Regarding Part-II work, a 'Go-Ahead Letter' dated 03.12.2012 [Exbt.5 of T.S.11 of 2014] was issued to the contractor mentioning that the tender was accepted by the department for a value of Rs.9,52,78,003/- and he was requested to mobilize and to start the works immediately, on all fronts, simultaneously so as to complete the same within 18 months therefrom. The said letter was also followed by the issuance of another letter of intent dated 11.12.2012 [Exbt.6 in T.S. 11 of 2014] issued by HSCL to the contractor reiterating the condition that the work had to be completed within 18 months and the date of starting of work would be reckoned after 7[seven] days from the date of receipt of the go-ahead letter.

[6] In the case of Part-III work also, a similar 'Go-Ahead Letter' was issued on 30.01.2013 [Exbt.8 of T.S.11 of 2014] to the contractor asking him to start the work within 7[seven] days from the date of receipt of said letter. The said letter was also followed by any another 'letter of intent' dated 02.02.2013 [Exbt.9 of T.S. 11 of 2014] containing similar terms.

[7] The relevant terms and conditions regarding delay, extension of time and termination of the works under Clauses 23.9, 54.1 and 54.2 as are mentioned in the SBDs of both the works [Exbt.1 of T.S.11 of 2014] are extracted hereunder:

“23.9 Delays and extension of time:

No claim for compensation on account of delays or hindrances to the work from any cause whatever shall lie, except as hereafter defined. Reasonable extension of time will be allowed by the Director, Directorate of Urban Development or his authorized representative or by the office competent to sanction the extension, for unavoidable delays, such as may result from causes, which in the opinion of the Director, Directorate of Urban Development or his authorized representative, are undoubtedly beyond the control of the contractor. The Director, Directorate of Urban Development or his authorized representative shall assess the period of delay or hindrance caused by any written instructions issued by him, at twenty five per cent in excess or the actual working period so lost.

In the event of the Director, Directorate of Urban Development or his authorized representative failing to issue necessary instructions and thereby causing delay and hindrance to the contractor, the latter shall have the right to claim an assessment of such delay by the Director, Directorate of Urban Development or his authorized representative whose decision will be final and binding. The contractor shall lodge in writing with the Director, Directorate of Urban Development or his authorized representative a statement of claim for any delay or hindrance referred to above, within fourteen days from its commencement, otherwise no extension of time will be allowed.

Whenever authorized alterations or additions made during the progress of the work are of such a nature in the opinion of the Director, Directorate of Urban Development or his authorized representative as to justify an extension of time in consequence thereof, such extension will be granted in writing by the Director, Directorate of Urban Development or his authorized representative or other competent authority when ordering such alterations or additions.

54.1. The Department may terminate the Contract if the contractor causes a fundamental breach of the Contract.

54.2. Fundamental breaches of Contract include, but shall not be limited to the following:

a) The contractor stops work for 28 days when no stoppage of work is shown on the current program and the stoppage has not authorised by the Engineer-in-Charge.

b) The Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.

c) The Engineer-in-Charge gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer-in-Charge; and

d) The Contractor does not maintain a security which is required and

e) The Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined.

f) If the contractor, in the judgment of the Department has engaged in corrupt or fraudulent practices in competing for or in the executing the contract.

For the purpose of this paragraph : “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a

public official in the procurement process or in the contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government and includes collusive practice among Tenderers (Prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and deprive the Government of the benefits of free and open competition.

54.1 Notwithstanding the above, the Department may terminate the contract for convenience.

54.2 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secured leave the Site as soon as reasonably possible.

[8] The contractor commenced the Part II work accordingly, but after some time, he instituted Title Suit No.01 of 2014 in the Court of the learned Civil Judge, Senior Division, West Tripura, Agartala [renumbered as Commercial Suit No.10 of 2016], alleging that after acceptance of his tender, no agreement was signed by the parties; rather the HSCL suddenly issued said 'go-ahead letter' asking him to start the work at a lower rate and even no letter of intent was ever furnished to him. He, accordingly, in good faith accumulated all the infrastructures, purchased some valuable machines, collected manpower and started the Part-II work. It is also stated by him that he could not start the Part-III work as the HSCL did not hand over the site of the work to him.

[9] Regarding Part-II work, according to the contractor, by April, 2013 he was able to complete 1/4th of the assigned work and thereafter, he had to go Chennai for his treatment on 17.06.2013 and returned there from on 05.07.2013 and during that period, the work was temporarily suspended. During his stay at Chennai, the HSCL wrote a letter to him on 25.06.2013 [Exbt.16 in T.S.11 of 2014] through the Assistant General Manager, HSCL (Civil) that neither the plaintiff resumed the work nor had responded to their letters which were unethical, and therefore, it appeared to them that the contractor was not interested to execute the balance work and therefore, 7[seven] days' notice was issued to him alleging that he was defaulter in

abandoning the contract; that he was persistently disregarding the instructions of the Engineer and that he had failed to adhere to the agreed programme of work by a margin of 10% of the stipulated period.

[10] By a letter dated 03.07.2013 said authority of HSCL gave him 48 hours' time as per Clause 109 of GCC of HSCL [according to the plaintiff, he was not aware of any such clause as there was no formal agreement between the parties] to rescind the contract and to get the balance work executed at his risk and cost, and therefore, he was asked to send an authorized representative on 06.07.2013 for taking joint measurements of the part work executed by him. He was also directed to account for the reinforcement steel and to return the surplus steel and steel shuttering plates issued to him on hire charges basis.

[11] On his return from Chennai, the contractor sent reply on 06.07.2013 [Exbt.15 of T.S.11 of 2014] to the HSCL that he did not sign any agreement with the HSCL regarding the said works in terms of the SBD and therefore, the allegation of suspension of the work by him was not tenable.

[12] The contractor also alleged in his suit that he had written a letter to the Director, Urban Development Department, on 09.07.2013 [Exbt.7 in T.S.01 of 2014], requesting him to intervene in the matter for settlement of dispute under Clause 22.2 of SBD, as he was termed as Arbitrator and in reply, the Superintending Engineer of the Department informed him on 01.08.2013 [Exbt.8 in T.S.01 of 2014] that as the agreement was drawn between the contractor and the HSCL for the aforesaid work, he was to take up the matter with the HSCL for settlement dispute.

[13] Thereafter, the plaintiff applied under RTI Act for information as to whether the Director of Urban Development Department was the arbitrator

in respect of said contracts or not and in reply, by the letter dated 26.08.2013, Director, Urban Development Department informed him that he was not aware of any such appointment as dispute settlement authority.

[14] The HSCL on the other hand, published one advertisement on 27.07.2013 in the web and in the newspapers inviting tenders for the incomplete work by rescinding the contracts entered between them and the contractor.

[15] Against the said action of the HSCL, initially the contractor presented a writ petition in this court, and after withdrawing the same, he instituted the said suit bearing T.S. 01 of 2014 praying for the following reliefs:

- (i) Pass a decree of declaration that the cancellation of the oral agreement commencing with the Go-ahead letters dated 30.07.2012 and 03.08.2012 and fixing 'Risk and Cost' condition is without authority and illegal.
- (ii) Pass decree to the effect that the Defendant-1, after making a joint measurement of the work done (1/4th Approx) by the Plaintiff, is liable to pay to the Plaintiff at negotiated rate.
- (iii) Pass decree to the effect that the Defendant-1 is liable to compensate the loss suffered by the plaintiff by illegal rescission of the contract by paying 20% on the balance work in two contracts (Part-II and Part-III) i.e. on estimated cost of Rs.9,52,78,000/- and Rs.8,81,24,000/-, which calculates to Rs.5.7 crores in all.
- (iv) Pass order as to cost and any other orders as may be considered proper for ensuring justice.

[16] The HSCL also thereafter instituted T.S.11 of 2014 alleging that the contractor, having stood as the lowest tenderer, reduced his rate from 5% above the estimated cost to 1.25% on negotiation in respect of Part-II work but he expressed his inability to reduce the rate regarding Part-III work. Therefore, his tenders were accepted by the HSCL without any further reduction in the rates. According to the HSCL, the contractor also received the following materials and advances:

- i) 1207.92 MT reinforcement materials;
- ii) Rs.1.40 crores against the reinforcement materials of 788.36 MT as brought by him;
- iii) Rs.1,64,64,000/- on 19.01.2013 as part payment and Rs.56.16 (unit not mentioned) on 18.01.2013 and a further sum of Rs.1,40,00,000/- on 18.04.2013;
- iv) Payment of Rs.1,40,92,231/- on 25.04.2013 and Rs.56.18 (unit not mentioned) on 25.04.2013;
- v) 199.60 MT of 12 mm dia TMT Bar, 219.96 MT of 8 mm dia TMT Bar and 788.36 MT of 12 mm dia TMT Bar;

- vi) 625 numbers of shuttering plates of measurement 1200X600, 590 numbers of shuttering plates of measurement 600X600;
- vii) 1600 pieces of shuttering plates on 31.03.2013 and 760 pieces and 180 pieces more on 09.04.2013;
- viii) 454 numbers of shuttering plates of measurement 1200x600;
- ix) 902 numbers of shuttering plates of measurement 600X600.

[17] Thereafter, the HSCL issued a letter to the contractor on 06.06.2013 [Exbt.13 in TS 11 of 2014] asking him to resume the work immediately but no response was received from him. They also sent another request letter dated 14.6.2013 [Exbt.14 in TS 11 of 2014] for a table discussion with Chairman-cum-Managing Director, HSCL, on 18.06.2013 but the contractor did not respond to that letter too. They further sent another letter on 19.06.2013 [Exbt.3 in TS 01 of 2014], requesting the contractor to resume the work by 24.06.2013 or to return the shuttering materials and unutilised steel. Neither did he return all these materials nor complete the works, rather, by his letter dated 06.07.2013 [Exbt.6 of TS 01 of 2014], he contended that no agreement was signed by him in connection with the aforesaid works. He also sent one notice through his Advocate, Mr. D.K. Biswas in the similar line.

[18] It is also stated by HSCL that the contractor received a total sum of Rs.4,45,56,231/- along with the materials and shuttering plates as indicated earlier, and considering the default of the contractor, he was served with a letter on 03.07.2013 under Clause 109 of GCC asking him to resume the work within 48 hours; otherwise, the contract work would be rescinded at his risk and cost. He was also asked to send one authorized representative on 06.07.2013 for taking the joint measurement of the executed part of the contract work, but he did not attend the same.

[19] Being compelled, they again issued NIT for the rest incomplete works and entrusted the same to one M/s Pobi Technologies and Construction

Private Limited for a value of Rs.9,13,88,275/- for Part-III work and for Rs.9,26,59,302/- for Part-II work.

[20] Finally, the HSCL prayed for a decree in that suit seeking the following reliefs:

A) A Decree of declaration that the defendant willfully and deliberately neglected to perform his part of contract thus causing damage to the plaintiff;

B) A declaration that the plaintiff is entitled to the sum of Rs. 5,00,56,231.00 (Rupees five crores fifty six thousand two hundred and thirty one) from the defendant being the excess payment received by him and also the return of the balance of the materials issued to him as stated in the plaint hereinabove and also the return of the steel shutting plates and in the alternative the value thereof as stated hereinabove and also the hire charges for the use and utilization of the steel plates issued to the defendant on hire charges.

C) The sum of Rs.65,26,265.00 (Rupees sixty five lakhs twenty six thousand two hundred and sixty five) being the excess payment made for execution of the balance work of M/S. Pobi Technologies and Contractions Pvt. Ltd. for Go Ahead Letter under No.HSCL/Tripura/ Central (Part-II)/2013/767 dated 14.08.2013 Ahead Letter under No.HSCL/Trip Central(Part-III)/2013/768 dated 14.08.201

D) Interest over the dues from 25.06.2013 payment @ 18% per annum;

E) Appointment of a Receiver over the properties as stated hereinabove;

F) Costs of the suit and incidental thereof;

G) Any other relief(s) as may deem fit and proper.

[21] In T.S.01 of 2014, the contractor, Dilip Kumar Kar, examined himself as PW-1 and proved certain documents and on behalf of the HSCL, one Sanjoy Kumar Thakur was examined as DW-1 but he did not prove any document. Another Barun Kumar Sarkar submitted his examination-in-chief on behalf of HSCL but there was no cross-examination of said witness.

[22] In T.S. 11 of 2014, said Sanjoy Kumar Thakur was examined as PW-1 for HSCL and he proved certain documents. Sri Barun Kumar Sarkar was also examined as PW-2. The contractor, Sri Dilip Kumar Kar, examined himself as DW-1 but he did not submit any document.

[23] Finally, learned trial court by the common judgment held that termination of the contract was arbitrary, inasmuch as the completion of the work period was 18 months but only after 8 months, M/s Pobi Technologies and Construction Private Limited was engaged to do the rest works. On the

count of loss of profits due to illegal termination of contract, learned trial Court awarded Rs.1,41,15,300/- (15% of the total value of the work) along with 6% interest per annum thereupon from the date of filing of the suit in favour of the contractor. Leaned trial Court also held that the HSCL did not lead any evidence to prove that the alleged materials were supplied to the contractor, as the copies of reinforcement register were not proved and moreover, the measurement register was also not proved in accordance with law. As a result, the Commercial Suit No.06 of 2016 instituted by the HSCL was dismissed.

[24] The HSCL now preferred both these appeals challenging the said common judgment and decree. The Commercial Appeal No.01 of 2023 is preferred against the part decree passed in favour of the plaintiff-contractor and Commercial Appeal No.02 of 2023 is preferred against the dismissal of the Commercial Suit No.06 of 2016.

[25] Mr. B. N. Majumder, learned senior counsel appearing for the appellant-HSCL, submits that despite repeated letters sent to the contractor, he failed to respond to those letters and did not even inform the HSCL about his medical treatment at Chennai. Referring to the letter dated 19.06.2013 [Exbt.3 of T.S.01 of 2014], learned senior counsel submits that the contractor in violation of the terms of contract, had abandoned the work.

[26] Mr. Nandi Majumder, learned senior counsel, also submits that repeated reminders were issued to the plaintiff to resume the works but he did not respond. Therefore, the HSCL vide letter dated 25.06.2013 [Exbt.4 of T.S.01 of 2014] issued 7 days' notice to the Contractor invoking Clause 109 of NIT/GCC of HSCL treating him as defaulter and rightly terminated the contract, but the learned trial Court failed to appreciate the fact.

[27] Mr. Nandi Majumder, learned senior counsel, also relies on a decision of the Supreme Court in case of *Trimex International FZE Ltd., Dubai vs. Vedanta Aluminium Ltd. India, 2010 AIR SCW 909*, wherein it was observed that once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialed.

[28] Ld. Counsel Mr. G.K. Nama, on behalf of the contractor, submits that when there was no formal agreement signed by the parties, cancellation of the contract invoking clause 109 of GCC was not permissible, and moreover, there was no such clause incorporated in the SBD. Therefore, the rescission of the contract by the HSCL was illegal.

[29] We have taken into consideration the submissions of both sides. The plaintiff in his evidence in T.S. 01 of 2014 stated that on 17.06.2013 he left for Chennai and returned to Agartala on 05.07.2013 and during said span of 20 days, the work was suspended for a short period. There is no cross-examination or denial of the said part of evidence from the side of HSCL. The letter dated 06.06.2013 [Exbt.13 of T.S. 11 of 2014] was issued by the HSCL on 05.06.2013 alleging that on their site visit, they did not find any labour working in drain Nos.18(a), 18(b), 18(c) and 16(a) and the labour shed was found dismantled, and therefore, the HSCL presumed that the contractor had unilaterally stopped the work and thus, they issued the said letter asking him to resume the work immediately. A copy of the postal tracking report is also placed in evidence along with the said letter but there is no indication therein that the said letter was ever served upon the contractor.

[30] On 14.06.2013, another letter was issued to the contractor by HSCL [Exbt.14 of T.S.11 of 2014] alleging that the work was stopped from 05.06.2013 and therefore, he was asked to join in a table discussion on 18.06.2013 with the CMD of HSCL at Kolkata. It appears that one Indrajit Debnath received the said letter on behalf of the contractor but who was said Indrajit Debnath, was not disclosed by the HSCL in their pleadings or in evidence to establish that said letter was actually served upon the contractor. In the said letter dated 14.06.2013, the HSCL stated also that the progress of the work was satisfactory and the contractor had already completed the work to the extent of Rs.1.10 crores.

[31] In the SBD, there is a termination clause (Clause No.54) as indicated earlier that the department may terminate the contract if the contractor stops the work for 28 days when no stoppage of work is shown on the current programme and the stoppage has not been authorized by the Engineer-in-Charge. The HSCL did not resort to said clause to cancel the contract, rather they applied clause 109 of GCC to rescind it. Said clause is not applicable to the contractor, for, no such clause finds its place either in SBD or in any other subsequent document signed by the parties relating to said work. Therefore, rescission of contract based on said clause is illegal and the learned trial Court has rightly held that the rescission of contract by the HSCL was arbitrary.

[32] While granting loss of profit to the contractor, learned trial Court has relied on paragraph No.11 of a decision of the Apex Court in **M/s. A.T. Brij Paul Singh & others vs. State of Gujarat, (1984) 4 SCC 59** and quantified the compensation @15% of the estimated cost of Rs.9,41,01,731/- and granted

damages to the tune of Rs.1,41,15,259/-. In the relevant paragraph No.11 of the said judgment, the Apex Court affirmed the method of compensation assessed by the High Court considering the attending facts and circumstances of said case at 15% of the value of the remaining part of the contract work (*emphasis laid*) and not 15% of the value of the estimated cost. The said relevant paragraph No.11 is extracted hereunder:

11. Now if it is well-established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff-contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15% of the value of the remaining parts of the work contract, the damages for loss of profit can be measured.

[33] The contractor did not specifically state as to how much of the Part-II work was completed by him till rescission. Only a general statement is made by him in his pleading that within April, 2013 he could complete 1/4th of the assigned work of Part-II. On the other hand, the HSCL in their letter dated 14.06.2013 [Exbt.14 in T.S.11 of 2014] indicated that the contractor completed the work of Rs.1.10 crores till the issuance of said letter. In absence of any other cogent evidence, said assertion is being taken into consideration for assessment of loss of profit without disturbing the procedure as adopted by learned trial Court in this regard. We assess loss of profit, therefore, in the following manner:

Value of the Part-II work as agreed by the parties = Rs.9,52,78,003/-

Value of the incomplete work
(Rs.9,52,78,003-Rs.1.10 crores) = Rs.8,42,78,003/-

15% of Rs.8,42,78,003/- = Rs.1,26,41,700/-

Loss of profit is, therefore, assessed at Rs.1,26,41,700/-[Rupees One crore Twenty Six lakhs Forty One thousand Seven hundred].

[34] Though the basic plea of the contractor is that as there was no signed agreement between the parties, the cancellation of the contract was illegal, but such logic cannot be accepted for the reason that several terms and conditions of the contract were already mentioned in the SBD which were accepted by the contractor and thereafter, another agreement under the nomenclature 'Integrity Pact' was also signed by both the parties. The HSCL also issued a letter of intent containing further terms and conditions, and impliedly accepting the same, the contractor started the work. But it is also surprising as to how a government undertaking like HSCL could go for public works involving huge amounts without any formal agreement signed by and between the parties.

[35] So far as the claims of the HSCL in respect of their suit bearing Commercial Suit No.06 of 2016 are concerned, the primary relief sought in this suit is to declare that the defendant wilfully and deliberately neglected to perform his part of contract, thereby causing damage to them. Consequent to that relief, they have also sought for a relief of declaration of their entitlement to Rs.5,00,56,231/- [Rupees Five crores Fifty Six thousand Two hundred Thirty One] for excess amount paid to the contractor and further, Rs.65,26,265/- [Rupees Sixty Five lakhs Twenty Six thousand Two hundred Sixty Five] being the excess payment made to M/s Pobi Technologies and Construction Private Ltd. for execution of the balance work. Learned trial Court declined the said reliefs as the primary relief of declaration of deliberate negligence of the contractor was declined.

[36] Regarding the prayer of HSCL for return of steel shutting plates, learned trial Court has held that the copies of reinforcement register was not

proved into evidence and the measurement register was also not properly proved though placed on evidence.

[37] We do not find any valid reason to disturb the aforesaid findings of the learned trial Court.

[38] In view of the above discussions, the Commercial Appeal No.01 of 2023 arising out of Commercial Suit No.10 of 2016 is partly allowed and the Commercial Appeal No.02 of 2023 arising out of Commercial Suit No.06 of 2016 is dismissed.

The judgment and decree passed by the learned trial Court in connection with Title Suit No.11 of 2014 [renumbered as Commercial Suit No.06 of 2016] are hereby affirmed.

It is held that the contractor is entitled to Rs.1,26,41,700/- [Rupees One crore Twenty Six lakhs Forty One thousand Seven hundred] from the HSCL along with interest @6% per annum from the date of filing of Title Suit No.01 of 2014 [renumbered as Commercial Suit No.10 of 2016] till payment/realisation. The default interest as allowed by the learned trial Court is interfered with and set aside.

No order as to cost(s).

Pending application(s), if any, also stand disposed of.

Registry is to prepare decree accordingly and to re-consign the records of the learned Court below with copies of this judgment and decree.

(S. DATTA PURKAYASTHA, J)

(M.S. RAMACHANDRA RAO, CJ)