

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 235 & 292 of 2013

Dated: 18th February, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Appeal No. 235 of 2013

In the matter of:

Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara-390 007,
Gujarat

... Appellant

Versus

1. Gujarat Electricity Regulatory Commission,
1st Floor, Neptune Tower, Ashram Road,
Ahmedabad- 380 009
2. Millenium Synergy (Gujarat) Pvt. Ltd. ... Respondents
403-404, Venue Atlantis, Prahladnagar
Anandnagar Road,
Ahmedabad – 380 015

Counsel for Appellant : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Mandakini Ghosh

Counsel for the Respondents: Ms. Shikha Ohri,
Mr. Matrugupta Mishra

Mr. Hemant Singh

Mr. S.N. Soparkar, Sr. Adv.
Mr. Tejas Karia,
Mr. Ramanuj Kumar,
Mr. Surjendu Sarkar Das,
Mr. Siddharth Agarwal for R-2

Appeal No. 292 of 2013

In the matter of:

Millenium Synergy (Gujarat) Pvt. Ltd. ... Appellant
403-404, Venue Atlantis, Prahladnagar
Anandnagar Road,
Ahemedabad – 380 015

Versus

1. Gujarat Electricity Regulatory Commission, ... Respondents
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar-382 355,
Gujarat.
2. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara-390 007,
Gujarat)

Counsel for Appellant: Mr. S.N. Soparkar, Sr. Adv.
Mr. Tejas Karia,

Mr. Ramanuj Kumar,
Mr. Surjendu Sarkar Das,
Mr. Siddharth Agarwal

Counsel for the Respondents: Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan for R-2

J U D G M E N T

MR. RAKESH NATH, TECHNICAL MEMBER

Appeal no. 235 of 2013 has been filed by Gujarat Urja Vikas Nigam Ltd (“GUVNL”) against the order dated 08.08.2013 passed by Gujarat Electricity Regulatory Commission (“State Commission”) in which it held that the Power Purchase Agreement (“PPA”) executed between the GUVNL and the Respondent no.2, a Solar Power Developer, is valid and enforceable. Appeal no. 291 of 2013 is the cross Appeal filed by the Millenium Synergy (Gujarat) Pvt. Ltd. hereinafter referred to as ‘Millenium Gujarat’,

against the same impugned order on the interpretation of Article 4.1 (x) of the PPA made by the State Commission.

2. Millenium Gujarat entered into a PPA dated 29.05.2010 with GUVNL for generation and sale of electricity by establishing a 10 MW solar power project on terms and conditions contained in the PPA. Article 4.1 (x) of the PPA provides for restriction on the transfer of share of the Solar Power Developer that it shall continue to hold at least 51% of equity upto a period of 2 years after achieving Commercial Operation of the project. Clause 9.2.1 of the PPA provides for breach of Clause 4.1(x) as an Event of Default with consequences. The principal issue to be considered in Appeal no. 235 of 2013 is the date on which the shares of Millenium Gujarat were transferred from Millenium Synergy Pvt. Ltd., the parent company, to SunEdison Energy India

- Ltd., hereinafter referred to as SunEdison, through an individual named Naveen Patil.
3. Appeal no. 292 of 2013 has been filed by Millenium Gujarat against the interpretation of Article 4.1(x) of the PPA made by the State Commission and finding that the said provision is valid and enforceable in the present case.
 4. In Appeal no. 235 of 2013, GUVNL has pointed out discrepancies in the claim made by Millenium Gujarat as to the date of transfer of shares and acquisition by SunEdison which is stated to be 28.05.2010. GUVNL has submitted that the transfer of shares to SunEdison was after 29.05.2010, the date on which the PPA was signed and the same was in violation of Clause 4.1(x) read with Clause 9.2.1(g) of the PPA.
 5. The brief facts of the case are as under:-

- i) Government of Gujarat on 01.08.2009 approved the proposal of Millenium Synergy Pvt. Ltd. (parent company) for establishing a 10 MW Solar Power Project as per its Solar Power Policy of 2009.
- ii) On 22.09.2009 Millenium Synergy (Gujarat) Pvt. Ltd. ("Millenium Gujarat") was incorporated as a limited company under the provisions of the Companies Act, 1956.
- iii) Millenium Gujarat was incorporated on 22.09.2009 with a paid up capital of Rs. One lakh comprising 10,000 equity shares of Rs. 10/- each for the development of Solar Power Project. Out of the above equity shares, 9999 equity shares of Rs. 10/- each were held in the name of Millenium Synergy (parent company) and one equity share was held in the name of Makam Satheesh, the promoter of Millenium Synergy.

- iv) On 05.11.2009, Millenium Synergy, the parent company, requested the Government of Gujarat that the solar power project be allowed to be done through Millenium Gujarat as a special purpose vehicle.
- v) According to Millenium Gujarat, on 29.03.2010, the parent company holding 9999 equity shares constituting 99.99% shares in Millenium Gujarat sold transferred and registered the shares at par in favour of one individual, Mr. Naveen Patil.
- vi) On 12/13.04.2010, Millenium Synergy approached the Government of Gujarat again for transfer of solar capacity in the name of their SPV namely Millenium Gujarat.
- vii) On 21.04.2010, the State Government permitted the change in allocation of 10 MW Solar power project from Millenium Synergy to Millenium Gujarat.

- viii) On 29.05.2010, a PPA was entered into between Millenium Gujarat and GUVNL. Article 4.1(x) of the PPA provided that the Power Producer shall continue to hold at least 51% of equity from the date of signing of the agreement up to a period of 2 years after achieving commercial operation date of project and 26% of equity for a period of 3 years thereafter. Article 9.2.1(g) provided for termination of PPA in the event of disinvestment of equity below minimum percentage holding during lock in period as mentioned in Article 4.

- ix) On 24.09.2012, GUVNL issued Default Notice to the Millenium Gujarat proposing termination of the PPA on the ground that transfer of shares of Millenium Gujarat to SunEdison had taken place after signing of the PPA, in violation of Article 4.1(x) of the PPA.

- x) On 08.10.2012, Millenium Gujarat filed a Petition before the State Commission seeking declaration that the Appellant is not entitled to terminate the PPA as transfer of shares had taken place prior to the date of

- signing of the PPA dated 29.05.2012 and also challenged the validity and enforceability of Article 4.1(x) of the PPA.
- xi) The State Commission by the impugned order dated 08.08.2013 decided that Article 4.1(x) and Article 9.2.1 (g) of the PPA are valid and enforceable, rejecting the contention of Millenium Gujarat but held that GUVNL has not been able to establish that the transfer of 9999 shares to SunEdison took place after 29.05.2010. The State Commission also held that the validity of the acquisition of 9999 shares of Millenium Synergy Gujarat by Naveen P. Patil, the predecessor in title of SunEdison is not relevant to the issue.
- xii) Aggrieved by finding regarding transfer of shares of Millenium Gujarat to SunEdison, GUVNL has filed Appeal no. 235 of 2013. Millenium Gujarat has filed cross Appeal no. 292 of 2013 challenging the findings

of the State Commission regarding validity and enforceability of Article 4.1(x) of the PPA.

6. GUVNL has made the following submissions:
 - a) The onus to prove that the share transfer had taken place prior to the date of signing of the PPA was on Millenium Gujarat and not on GUVNL.
 - b) The State Commission has not drawn proper inference and conclusion which naturally follows based on the evidence available on record and the discrepancies in the documents produced by Millenium Gujarat. The existence of such discrepancies should naturally lead to an adverse inference in law against Millenium Gujarat.
 - c) There is no explanation as to the reason for execution of the Share Purchase Agreement (“SPA”) on 28.05.2010 providing for various condition precedents for transfer of shares including the condition that

- transferor shall not sell the shares between the date of the agreement and closing when the share transfer also was to take place on the very same day.
- d) The title of the transferor to 9999 equity shares claimed by Naveen P. Patil based on alleged acquisition of the said shares from Millenium Synergy on 29.03.2010 was not sustainable at all and was clearly fabricated and manipulated as per the documents filed. As the title of Naveen P. Patil itself is in dispute, the transferee Sun Edison could not have acquired the shares without proper explanation as to the title of Naveen P. Patil being established.
- e) Millenium Synergy (parent company) vide letters dated 05.11.2009 and 12/13.04.2010 to the State Government sought change in allocation from itself to its SPV. It is also claimed that one Mr. Naveen P. Patil procured 9999 shares of Millenium Gujarat. The above

- claim before the State Government was not comprehensible in view of the fact that Millenium Synergy (parent company) was not the shareholder of Millenium Gujarat after 29.03.2010.
- f) The audited balance sheet of Millenium Gujarat as on 31.03.2010 states that 9999 shares are held by Millenium Synergy. The document was signed as late as 25.08.2010 by the directors and the statutory auditors.
 - g) Form 23 AC filed by Millenium Gujarat before the Registrar of companies for Annual General Meeting held on 25.08.2010 also in entry 8 states that the company is a subsidiary of Millenium Synergy.
 - h) The consideration paid is also revealing. Millenium Synergy was paid Rs. 99,990/- by Naveen P. Patil for acquiring 9999 shares in Millenium Gujarat. As per the claim made, Mr. Naveen P. Patil on 28.05.2010 sold

the same shares to SunEdison for a consideration of Rs. 2,95,00,150/-.

- i) Share transfer forms produced by Millenium Gujarat is incomplete. The transfer form from Millenium Synergy (parent company) to Mr. Patil does not even have the signatures of Mr. Patil, who is the transferee. There is no attestation by the witness. The second page of the share transfer form is also completely blank.
- j) This is in violation of Section 108 of the Companies Act which requires the share transfer form to be duly stamped and executed by both the transferor and the transferee and in the absence of any of the above, the company is prohibited from registering the share transfer. Thus, the alleged registration done by Millenium Gujarat in violation of above is void and has no effect. This is settled by Claude-Lila Parulekar V

- Sakal Paper (P) Ltd, (2005) 11 SCC 73 and Mannalal Khetan V. Kedar Nath Khetan (1977) 2 SCC 424.
- k) The State Commission has incorrectly come to the conclusion that the transfer of shares to Mr. Naveen P. Patil is irrelevant for consideration.
 - l) Clause 3 of the Share Purchase Agreement “SPA” would show that on 28.05.2010 when SPA was signed, the transfer of shares did not take place and the same was subject to various conditions to be fulfilled.
 - m) The press release by SunEdison on its worldwide website which lists every acquisition, participation, etc., of SunEdison from 2006 to 2010 which includes even minor projects of 1 MW did not have the mention of Millenium Gujarat being acquired and developed by SunEdison till July 2010.

- n) The payment of stamp duty on transfer of shares by getting franking of the share transfer form on 28.05.2010 does not establish that the transaction of sale and purchase of shares occurred on the said date.
- o) The Registers of Members contains various over-writings, sticking of pages, use of white fluid. The veracity of the Register of Members is, therefore, highly doubtful.
- p) The payment of consideration by SunEdison on 28.05.2010 is claimed to be paltry amount of Rs. 1000/- out of total consideration of Rs. 2,95,00150/- and that too is paid in cash. This is an unusual transaction.
- q) In addition to above, GUVNL has pointed out discrepancies in payment of Rs. 44 lacs by Millenium Gujarat to Naveen Patil when the shares were purchased by SunEdison. Mr. K.S. Narayanan who

- signed the PPA on 29.05.2010 was in fact an officer of Millenium Synergy.
7. In reply Millenium Gujarat has made detailed submissions with copies of the relevant documents to establish that the share transfer to SunEdison had taken place prior to the signing of the PPA with GUVNL.
 8. On the above issues we have heard Mr. M.G. Ramachandran and Shri Anand K. Ganesan, Learned Counsel for GUVNL, Shri S.N. Soparkar, Sr. Advocate for the Respondent no.2 and Ms. Shikha Ohri, Learned Counsel for the State Commission.
 9. It was fairly agreed by Mr. S.N. Soparkar, Learned Senior Counsel for the Respondent no.2 that the issue regarding validity and enforceability of the Article 4.1(x) raised in Appeal no. 292 of 2013 has already been

decided against them in Appeal nos. 290 of 2013 and 291 of 2013 by judgments dated 30.11.2014. Accordingly, in term of our findings in Appeals no. 290 of 2013 and 291 of 2013, Appeals no. 292 of 2013 is dismissed and the State Commission's finding regarding validity and enforceability of Article 4.1 (x) of the PPA is upheld.

10. In view of the finding of this Tribunal in judgments dated 30.11.2014 in Appeal no. 234 and 236 of 2013 wherein orders of the State Commission on similar issues was challenged by GUVNL, Shri M.G. Ramachandran, Learned Counsel for the GUVNL has restricted his arguments to the following issues:
 - a) As title of transfer of shares to Naveen P. Patil on 29.03.2010 from Millenium Synergy (parent company) itself is in dispute, the transferee SunEdison could not

- have acquired the shares without proper explanation as to the title of Naveen P. Patil being established.
- b) Letter dated 13.04.2010 to Government of Gujarat for transfer of allocation to its SPV Millenmium Gujarat was signed by Mr. M S Satheesh as Managing Director of Millenium Synergy, and therefore, it could not be claimed that Mr. Naveen P. Patil had procured 9999 shares of Millenium Gujarat representing 99.99% shares on 29.3.2010.
 - c) The audited balance sheet of Millennium Gujarat as on 31.03.2010 signed by its Directors and Statutory Auditors as late as 25.08.2010 states that 9999 shares are held by Millenium Synergy.
 - d) Form 23 AC filed by Millenium Gujarat before the Registrar of Companies for the AGM held on 25.08.2010 also in entry 8 states that the company is a subsidiary of Millenium Synergy.

- e) Naveen P. Patil acquired 99.99% shares of Millenium Gujarat at Rs. 99,990/- but sold the same to SunEdison for a consideration of around Rs. 2.95 crores.
 - f) Share transfer form for transfer from Millenium Synergy (parent company) to Naveen P. Patil does not have signatures of Naveen P. Patil. Thus the transfer was not valid as per Section 108 of the Companies Act.
 - g) The resolution of the Board dated 28.05.2010 is not signed by one of the Directors.
 - h) Press release by SunEdison on its website did not mention acquisition of Millenium Gujarat till July 2010.
11. On the basis of rival submissions of the parties, the following issues will arise for our consideration:
- i) **Whether based on the evidence produced by GUVNL and Millenium Gujarat adverse inference can be drawn against Millenium Gujarat to the**

- effect that transfer of 99.99% shares of Millenium Gujarat to SunEdison took place after the date of signing of the PPA on 29.5.2010?**
- ii) Whether the non-signing of the share transfer form by Mr. Naveen P. Patil as a transferee will make the share transfer from Millenium Synergy to Naveen P. Patil invalid?**
- iii) Whether the validity of acquisition of the equity shares of Millenium Gujarat by Mr. Naveen P. Patil from Millenium Synergy are relevant to the issue of transfer of shares by Naveen P. Patil to SunEdison?**
12. All the three issues are interconnected and are being dealt with together.
13. The findings of the State Commission on the above issues after examining the documents submitted by the parties are as under:

- i) The GUVNL has not been able to prove that the documents are manipulated and cannot be relied upon. The seller has confirmed the sale, the buyer has the same view and the company whose shares were transferred has produced the relevant Board resolution approving such transfer. Hence, the documents can be relied upon. The discrepancies pointed out by the GUVNL are of minor nature and not enough to show that the documents are fabricated. The State Commission relied upon M.S. Madhusoodhanan and Anr. Vs. Kerala Kaumudi Pvt. Ltd. & Ors. (2004) 9 SCC 204, Vasudev Rechandra Shelat Vs. Pranal Jayanand Thakar (1975) 133 ITR 43 (SC) and Life Insurance Corporation of India Vs. Escorts Ltd., AIR(1986) 1 SCC 264 to come to above conclusion.
- ii) Share Transfer Agreement (SPA) was relevant even if the transfer of shares took place on the same day and

- GUVNL's contention that the execution of SPA on 28.05.2010 shows that the share transfer could not have been completed on that date or even the date of PPA is not valid.
- iii) Payment of consideration was not a prerequisite for completing the transfer of shares.
 - iv) Absence of public announcements or not mentioning a particular project on the website of a company does not establish that the project had not been acquired. A company may have various considerations and reasons whether and when to make an announcement about its acquisition of a project.
 - v) Issue of transfer of shares to Mr. Naveen Patil, which was before signing of the PPA, does not appear to be relevant to the present case. Even if it is assumed that it is relevant, the main objection that Mr. Naveen Patil had not put his signatures on transfer form does not

invalidate the transfer of shares. M/s. Millenium Synergy has also unequivocally demonstrated that it does not deny Mr. Naveen Patil's authority to sell the subject share to SunEdison.

14. Let us examine the copies of the documents produced by Millenium Gujarat to establish that the share transfer to SunEdison had taken place on 28.05.2010.
15. The Government of Gujarat had announced solar power policy, 2009 for promoting development of solar power projects in the State. The solar policy does not prescribe any instruction regarding change in shareholding of the allocatee company at any point of time. The allocation letter dated 01.08.2009 from Government of Gujarat to Millenium Synergy for development of 10 MW Solar PV project also did not prescribe any condition with respect to change in shareholding of the allocatee company. After

- incorporation of Millennium Gujarat in which 99.99% shares were held by Millenium Synergy, Millenium Synergy requested Government of Gujarat by letter dated 05.11.2009 to incorporate Millenium Gujarat in place of Millenium Synergy in the allotment letter by issuing a corrigendum.
16. Subsequently in March 2010, Millennium Synergy sold and transferred 9999 shares of Millenium Gujarat to one Mr. Naveen P. Patil. Let us examine the documents regarding transfer of shares to Naveen P. Patil.
 17. We find that the Board of Directors of Millenium Synergy passed a resolution on 22.03.2010 approving sale and transfer of 9999 equity shares held by it in Millenium Gujarat to Mr. Naveen Patil at face value. The share transfer form dated 29.03.2010 bears the signature of the Director of Millenium Synergy, the transferor. However, the Share Transfer form has not

- been signed by Mr. Naveen Patil as a transferee and only his name and other particulars have been written against the name and particulars of the transferee.
18. The copy of the minutes of the meeting of the Board of Directors of Millennium Gujarat held on 29.03.2010 shows the resolution for approving transfer of 9999 equity shares from Millenium Synergy to Naveen Patil. Mr. Naveen Patil was also present in the Board meeting as an invitee. The Board also resolved to appoint Mr. Naveen Patil as Additional Director of the Company.
 19. We find that the share transfer form dated 28.05.2010 for transfer of 9999 shares of Millenium Gujarat has been duly stamped for Rs. 73,770/- and signed by the Seller, Naveen Patil and the Buyer, SunEdison India. The share transfer form has been franked by BOI Shareholding Ltd. and Millenium Gujarat has produced a copy of receipt for Rs. 73,780/- dated 28.05.2010.

(Franking value of Rs. 73,770/- plus service charge of Rs. 10.00).

20. The Board of Millennium Gujarat by circular resolution dated 28.05.2010 approved the transfer and registration of 9999 shares in favour of SunEdison India and the appointment of Mr. Pashupathy Gopalan, Mr. Rahul Sankhe and Mr. K.S. Narayanan, all representatives of SunEdison India as Directors of Millenium Gujarat. The Board also removed Mr. Naveen Patil, Mr. Makam Siddarama Satheesh and Mr. Abhijith Paramashivappa Marve, who had submitted their resignation as Directors. The resolution has been signed by two Directors. We also notice that on 28.05.2010, Naveen Patil, SunEdison India and Millenium Gujarat executed Share Purchase Agreement ('SPA') for sale/purchase of 9999 shares of Millenium Gujarat.

21. The copy of Register of Members maintained by Gujarat Millennium shows transfer of 9999 shares from Millennium Synergy to Mr. Naveen Patil on 29.03.2010 and transfer of 9999 shares for Naveen Patil to SunEdison on 28.04.2010. The copy of share certificate shows the first transfer of the share on 29.03.2010 to Naveen P Patil and second transfer on 28.05.2010 to SunEdison. The transfer has been duly stamped and signed.
22. GUVNL and Millenium Gujarat executed a PPA on 29.05.2010. We find that on behalf of Millenium Gujarat, its Director Mr. K.S. Narayanan who was appointed as Director of Millennium Gujarat by Board resolution dated 28.05.2010, signed the PPA.
23. The position which emerges from the scrutiny of above documents is that 9999 shares of Millenium Gujarat

- were transferred to SunEdison on 28.05.2010, a day prior to the signing of the PPA.
24. Let us examine the discrepancies pointed out by Learned Counsel for GUVNL.
 - 25. The first issue is the absence of signatures of Mr. Naveen P. Patil as a transferee, on the share transfer form dated 29.03.2010.**
 26. According to Learned Counsel for GUVNL, this is in violation of Section 108 of the Companies Act, 1956 which requires the share transfer form to be duly stamped and executed by both transferor and the transferee and in the absence of any of the above, the company is prohibited from registering the share transfer. He referred to *Claude-Lila Parulekar v. Sakal Papers (P) Ltd.*: (2005) 11 SCC 73, in which one of the transferor did not sign the share transfer form. It was held by Hon'ble Supreme Court that it was not lawful for

the company to register the transfer. He also referred to Mannalal Khetan V. Kedar Nath Khetan (1977) 2 SCC 424 wherein it was held by Hon'ble Supreme Court that Section 108 of the Act is mandatory.

27. We agree with the finding of the State Commission that the transfer of shares from Millennium Synergy to Naveen Patil is not relevant to the case as we are concerned about transfer of shares from Naveen Patil to SunEdison as the transfer has been confirmed by both the transferor, Millenium Synergy and the transferee, Naveen Patil, and there is no dispute between them regarding the transfer. Mr. Naveen Patil in his affidavit filed on 05.02.2013 has stated on oath that though the share transfer form does not bear his signatures as a transferee, it was an oversight and he inserted his name in the share transfer form and lodged the share transfer form with Millennium Gujarat. He has

also confirmed in his affidavit that he acquired 9999 shares of Millenium Gujarat from Millenium Synergy on 29.03.2010 and transferred the said shares to SunEdison India on 28.05.2010.

28. Claude Lila case referred to by the Learned Counsel for GUVNL dealt with compliance of Section 108 in a situation where one of the joint transferor had not signed the share transfer form and consequently the company's registration of transfer in view of non-compliance with Section 108 was held invalid. This case did not deal with the situation in the present Appeal where transferor has accepted transfer of shares and the transferee filled his name in the transfer form and submitted to the company for effecting the transfer along with share certificates. The transferee in the present case was part of the Board meeting that approved and recorded the transfer in his favour and

the share certificates have been endorsed in the name of transferee. The transferee was also appointed as Additional Director of Millenium Gujarat in the same meeting.

29. In Mannalal Khetan case referred to by GUVNL, there was an agreement to transfer shares which were the subject of attachment by the Income Tax authorities and in pursuance of this agreement, the company registered the shares in the name of the respondents. There was no instrument of transfer executed, stamped and delivered to the company. The Supreme Court in that case did not have the occasion to consider similar situation as in the present case.
30. Section 108(1) of the Companies Act, 1956 states that a company shall not register a transfer of shares of the company unless a proper instrument of transfer duly stamped and executed by or behalf of the transferor

and by and on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the share certificate and if no share certificate is existing, along with a letter of allotment of shares. Under first Proviso to Section 108(1), the Board of the Company may register a transfer on an application made by the transferee and bearing the requisite stamp duty if the Board is satisfied that instrument of transfer signed by the transferor and transferee has been lost. Therefore, execution of share transfer form is not the only mode of share transfer and deviation from such mode of transfer exists under the proviso to Section 108(1).

31. In Hoshiarpur Azad Transport Ltd. Vs. Hoshiarpur Express Transport Company : (1983)54 Com cas 254, the Punjab & Haryana High Court rejected the

argument that the defendants in whose favour the plaintiff had transferred the shares should be removed as shareholders of the company on the ground that share transfer form had not been signed by the transferee and provision of Section 108 were not complied with. The court held that where the company had already accepted the transfer and the defendants have also accepted the transfer, it was of no significance that deed of transfer was not signed by the transferee and the contract of transfer was valid in the eyes of law.

32. In *M S Madhusoodhanan & Another Vs Kerala Kaumudi Pvt. Ltd. & Ors.* : (2004) 9 SCC 204 it was decided that the minutes of the meeting kept in accordance with Section 193 of the Companies Act shall be evidence of the proceedings recorded therein and, unless contrary is proved, it shall be presumed under Section 195 that

the meeting of the Board of Directors was duly called and held and all proceedings there at to have duly taken place. The onus was on the contesting party to disprove that transfer had not take place as recorded in the minutes of the Board meeting. The Hon'ble Supreme Court relied on the various minutes of the meeting and resolution to ascertain the intention of the parties and upheld the transfer of shares in favour of the Appellant even though no consideration was paid and no proper documents had been executed and Section 108 had not been complied with. The findings of Madhusoodhanan case will apply to the present Appeal.

33. In the present case both the transferor and the transferee have accepted the transfer and the Board of Directors has approved the transfer and the same has been registered by the company. Therefore, we do not

find any merit in the contention of GUVNL that the transfer of shares to Shri Naveen Patil was not valid and, therefore, the transfer of shares from Shri Naveen Patil to SunEdison is invalid legally.

34. The second issue raised by GUVNL is that the Register of Members has not been signed by the Company Secretary or any other authorized person of the Company.

35. According to Learned Senior Counsel for the Milleneum Gujarat, Section 164 of the Companies Act, 1956 refers to the register of member to be maintained pursuant to Section 150(1) thereof. Neither Section 150(1) nor Section 164 requires the register to be signed by the Company Secretary or any other person authorized in this behalf.

36. We find that Section 164 of the Companies Act provides that the register of members shall be a prima

facie evidence in any matters directed or authorised to be inserted therein by the Act. Section 150 provides for the company to keep a register of its members and enter the particulars as specified in the said section. There is no specific requirement of signatures of the Company Secretary or any other authorized person in the register of members in these provisions, but for proper authentication it is expected that such register is duly signed by an authorized person of a company. However, we feel that non-authentication of the entries in the Register of Members by the authorized person of the company may be a minor lapse but it would not invalidate the transfer of shares duly approved by the Board resolution and the transfer duly endorsed on the share certificates. In Alliance Financial Corporation 3 BOM HOCC 111 (Bom) it was held that any insignificant or minor deviation or omission will not invalidate the register.

- 37. The third issue raised by GUVNL is that the Board Resolution passed on 28.05.2010 approving the share transfer to SunEdison has not been signed by one of the Directors namely Mr. M S Satheesh.**
38. We find that the circular Resolution of the Board dated 28.05.2010 was signed by two of the three Directors. Mr. Makam Satheesh had not signed the circular resolution. A circular resolution approved by a majority of the Directors is valid under Section 289 of the Companies Act, 1956. Further Mr. M.S. Setheesh resigned from the Board of Directors on 28.05.2010 and confirmed by his letter dated 28.05.2010 that he had no claims whatsoever against Millenium Gujarat.
- 39. The fourth issue raised by GUVNL is that the balance sheet for the year ending 31.03.2010 establishes that Millenium Synergy continued to be the owner of 9999 shares of Millenium Gujarat till**

31.03.2010 and therefore it cannot be accepted that share transfer from Millenium Synergy to Naveen Patil had taken place on 29.03.2010.

40. According to Learned Senior Counsel for Millenium Gujarat, the entry in balance sheet is clearly an error. He gave the following explanation for the same:

- a) Form 23 AC and the accompanying balance sheet of Millenium Synergy for the year ending 31.03.2010 does not show Millenium Gujarat as a subsidiary.
- b) Under Schedule F (Investment and Deposits) to the balance sheet of Millenium Synergy for Financial Year ending 31.03.2010 does not show any investment in Millenium Gujarat.
- c) In the detailed affidavit filed on 02.02.2013 by Mr. Rahul Sankhe on behalf of Millenium Gujarat it was clarified that reference to Millenium Synergy owning 99.99%

- equity shares of Millenium Gujarat as on 31.03.2010 is factually incorrect and to be an inadvertent error.
- d) The Annual Return for FY 2009-10 filed by Millenium Gujarat with Registrar of Companies, register of members, register of share transfers and the share transfer form executed by Millenioum synergy independently establish that Millenium Synergy had sold its entire share holding in Millenium Gujarat to Naveen Patil on 29.03.2010.
- e) Subsequent to the error being discovered, Millenium Gujarat has promptly initiated steps to rectify its balance sheet for FY 2009-10 and after obtaining approval of the Company Law Board, has rectified its balance sheet for FY 2009-10 and filed a rectified balance sheet with Registrar of Companies on 01.02.2013. A copy of the rectified balance sheet has been filed by Millenium Gujarat.

- f) Schedule V, Part II of the Annual Return (as attachment of Form 20B for FY 2009-10) filed by Millenium Gujarat with Registrar of Companies was signed by the Directors on 28.10.2010, much prior to the GUVNL raising any questions about the shareholding pattern of Millenium Gujarat. This Annual Return records all transfers of shares since the date of last AGM and transfers therein recorded transfer of 9999 shares from Millennium Synergy to Naveen Patil on 29.03.2010, transfer of 1 share from M. S., Satheesh to K.S. Narayanan on 28.05.2010 and transfer of 9999 shares from Naveen Patil to SunEdison India on 28.05.2010.
41. We have examined copies of the documents submitted by Millenium Gujarat to establish that there was an error in the balance sheet which was rectified later after the approval of the Company Law Board. In view of the explanation of Millenium Synergy, we do not feel

that the discrepancy in the balance sheet, which has since been rectified, and other supporting documents regarding transfer of shares from Millenium Synergy to Naveen Patil and thereafter to SunEdison submitted by Millenium Gujarat, would render transfer of equity shares to SunEdison invalid and illegal.

42. The fifth issue is regarding letters issued by Millenium Synergy to Government of Gujarat showing that Millenium Synergy was the controlling shareholder of Millenium Gujart until the date of the PPA.

43. Senior Counsel for the Millenium Gujarat has made following explanation in this regard:

a) Letter dated 05.11.2009 from Millenium Synergy to Government of Gujarat only indicated that they had registered a company viz Millenium Gujarat and requested to issue a corrigendum to the original

- Government order dated 01.08.2009 incorporating Millenium Gujarat in place of Millenium Synergy.
- b) The letter dated 13.04.2010 was in continuation of letter dated 05.11.2009 reiterating the request to change the allocation in the name of Millenium Gujarat. Being the original allocatee, any request for change in allocation could only have been made by Millenium Synergy, and none else.
- c) The Government of Gujarat vide letter dated 21.04.2010 approved the allotment of 10 MW project to Millenium Gujarat. In this letter, there is no mention of the Millenium Gujarat being or continuing to remain an SPV of Millenium Synergy. The transfer of allocation in favour of Millenium Gujarat is without any conditions/restrictions, other than the terms and conditions of Solar Power Policy, 2009. The said policy

does not prescribe any restriction on the allocatee company regarding transfer of shares.

44. We have examined the above documents referred to by Learned Senior Counsel for Millenium Gujarat. We agree that being the original allocatee, the approval for transfer/change in allocation could have been initiated and carried through by Millenium Synergy only. There was no restriction on transfer of shares of the allocatee company as per the State Government Policy. The restriction was imposed only consequent to signing of the PPA. The transfer of allocation of the project by the State Government to Millenium Gujarat also does not impose any restriction on the ownership of the company. Therefore, we reject the contention of GUVNL on this issue.

45. The sixth issue raised by GUVNL is the press release of SunEdison India.

46. Learned Senior Counsel for the Millenium Gujarat has argued that the absence of press release is not an evidence to establish that the share transfer did not take place on 28.05.2010 but took place only after that date. It was denied that the list of events mentioned at the website of SunEdison captures every acquisition from 2006 to 2010.
47. We find force in the argument of Learned Senior Counsel for Millenium Gujarat and feel that absence of press release immediately after 29.05.2010 could not be used as an evidence against the Millenium Gujarat. As rightly held by the State Commission a company may have various considerations and reasons for deciding when to make an announcement about its acquisition of a project.
- 48. The seventh issue raised by GUVNL is consideration paid to Naveen Patil by SunEdison.**

49. We do not feel the consideration paid to Naveen Patil by SunEdison is related to date of transfer of share to SunEdison.
50. We find that all legal requirements for transfer of share from Naveen Patil to SunEdison required under Section 108 namely proper instrument of transfer (share transfer form) duly stamped and executed by transferor and transferee, and relevant share certificate were satisfied.
51. Learned Senior Counsel for Millenium Gujarat referred to M.S. Madhusoodhanan & Anr. V Kerala Kaumudi Pvt. Ltd. & Ors. : (2004) 9 SCC 204, which has also been relied upon by the State Commission in the impugned order. Let us examine this case.
52. In M.S. Madhusoodhanan case, one of the parties, one Mr. Mani, had sought to set aside transfer of 390 shares in favour of Mr. Madhusoodhanan on the

grounds namely, the consideration for the transfer had not been agreed upon and no consideration had in fact been paid, no proper documents had been executed effecting the transfer and Section 108 of the Companies Act had not been complied with in respect of the transfer. Hon'ble Supreme Court relied upon various minutes of the meeting and resolution to ascertain the intention of the parties and upheld the transfer of shares in favour of Mr. Madhusoodhanan. Hon'ble Supreme Court held as under

“Furthermore, under Section 194 of the Companies Act, 1956, minutes of meetings kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein and, unless the contrary is proved, it shall be presumed under Section 195 that the meeting of the Board of Directors was duly called and held and all proceedings there at to have duly taken place. The onus was on Mani to disprove that the transfers had not taken place as recorded in the minutes of the Board meeting held on 21 May, 1985, an onus that he has singularly failed to discharge.”

“Also, Article 89 says that a resolution in writing circulated to all the Directors and assented to by a

majority of them shall be as valid as a resolution passed at a meeting of the Board of Directors.”

“40. Therefore, the minutes may be prepared subsequently, but they must be duly entered in the Minute Book and initialed and it is nobody’s case that this was not done. Finally, Madhusoodhanan has also said that formal meetings were held and the important decision were circulated to all members. In any event, our conclusion that the transfer of shares by Mani and his children to Madhusoodhanan would stand without the support of the statutory presumption under Section 195 of the 1956 Act.”

The findings in the above case would apply to the present case.

53. In Vasudev Ramachandra Shelat V. Pranal Jayanand Thakur (1975) Comp Cas. 43 (SC), the donor gifted certain shares in various companies to her brother by a registered gift deed. She also signed some blank transfer forms to enable the transfer of donated shares in the register of companies and share certificates in his name. The shares could not be transferred in the

register of the companies before the donor's death. The nephew of the donor disputed the claim of the Appellant to the donated shares. Hon'ble Supreme Court held that even in the absence of registration of the gift deed, the delivery of the documents to the donee, with the clear intention to donate, would be enough to confer upon the donee a complete and irrevocable right. Further, share certificate is a prima facie evidence under Section 29 of the (1913) Act of the title to a share.

54. In view of above judgments, the transfer of 9999 shares from Millenium Synergy to SunEdison through Naveen Patil would not be rendered invalid due to certain discrepancies pointed out by GUVNL.
55. In the present case, the Board of Directors of Millenium Gujarat on 28.05.2010 have approved the transfer of 9999 shares in favour of SunEdison after receipt of duly

executed and stamped transfer form and share certificates. The share certificates have been duly endorsed in favour of SunEdison India on 28.05.2010. Thus, the transfer of shares to SunEdison was completed on 28.05.2010.

56. It is also submitted by the Learned Senior Counsel for Millenium Gujarat that Shri K.S. Narayanan, who was appointed a Director on behalf of SunEdison India on 28.05.2010 signed the PPA on behalf of Millenium Gujarat. It has been submitted that Shri Narayanan might have been associated into Millenium Synergy in the past. Mr. Narayanan resigned from his position at Millenium Synergy on 29.03.2010 and his resignation was accepted by Millenium Synergy on 31.03.2010. Thereafter, he was engaged as a consultant by SunEdison. On 28.05.2010 he was appointed as a Director of Millenium Gujarat on behalf of SunEdison.

He has also produced documents to establish the above which we have perused.

57. In judgment dated 30.11.2014 in Appeals no. 234 and 236 of 2013 in a similar case, this Tribunal has already rejected the contention raised by GUVNL that share transfer was not complete till the full payment of consideration. This finding will squarely apply to the present case.

58. In view of above, we do not find any merits in the contentions of GUVNL that transfer of 9999 shares to SunEdison had taken place after the execution of the PPA on 29.05.2010 and the documents are fabricated. On the other hand Millenium Gujarat has been able to establish that the share transfer of 9999 equity shares of Millenium Gujarat to SunEdison had taken place on 28.05.2010.

59. Summary of our findings

- i) We are in agreement with the findings of the State Commission that it could not be established that the transfer of shares of Millenium Gujarat to SunEdison had taken place after the date of signing of the PPA. On the other hand, the documents produced by Millenium Gujarat establish that the transfer of shares to SunEdison had taken place prior to the signing of the PPA. The discrepancies pointed out by GUVNL are of minor nature and not on that basis the PPA cannot be rendered invalid.**

- ii) The issue of transfer of shares to Naveen Patil from Millenium Synergy which occurred prior to the signing of the PPA is not relevant in the present case. Even if it is assumed that this issue is relevant, non-availability of signatures of Naveen Patil on the transfer form as a transferee alone would not negate the transfer especially when both transferor and the transferee have accepted the transfer and the Board of Directors of Millenium Synergy has approved the sale of the equity shares to Naveen Patil, the Board of Directors of Millenium**

Gujarat has approved the transfer and entries regarding the share transfer have been made in the Register of Members of the company and duly endorsed on the share certificates.

iii) Article 4.1(x) of the PPA is valid and enforceable.

57. In view of above both the Appeals no. 235 of 2013 and 292 of 2013 are dismissed. No order as to costs.

60. Pronounced in the open court on this **18th day of February, 2015.**

(Rakesh Nath)
Technical Member

(Justice Mrs. Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE

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