

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

Appeal No. 234 & 290 of 2013

Dated 30th November, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Appeal No. 234 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. M/s. ESP Urja Pvt. Limited,
403-404, Venus Atlantis, Prahladnagar,
Anandnagar Road, Ahmedabad-380 015 ... Respondents

Counsel for Appellant : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Anushree Bandhai

Counsel for the Respondents: Mr. Sanjay Sen, Sr. Ad.
Ms. Shikha Ohri,
Mr. S.R. Pandey, Legal Advisor for R-1

Mr. S.N. Soparkar, Sr. Adv.
Mr. Tejas Karia,
Mr. Ramanuj Kumar,
Mr. Surjendu Sarkar Das,
Mr. Siddharth Agarwal
Ms. Meghana Aggarwal for GERC

Appeal no. 290 of 2013

In the matter of:

M/s. ESP Urja Pvt. Limited,
403-404, Venus Atlantis, Prahladnagar,
Anandnagar Road, Ahmedabad-380 015,
Gujarat ... Appellant

Versus

1. Gujarat Electricity Regulatory Commission,
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) ... Respondents

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
Ms. Poorva Saigal,
Ms. Swagatika Sahoo,
Ms. Anushree Bandhai for R-2

J U D G M E N T

MR. RAKESH NATH, TECHNICAL MEMBER

Appeal no. 234 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 Respondent no.2, Solar Power Developer is valid and enforceable. Appeal no. 290 of 2013 is the cross Appeal filed by the ESP Urja Pvt. Ltd. against the same order on the interpretation of Article 4.1 (x) of the PPA made by the State Commission.

2. ESP Urja Pvt. Ltd. entered into a PPA dated 31.05.2010 with GUVNL for generation and sale of electricity by establishing a 5 MW solar power project

on terms and conditions contained in the PPA. Clause 4.1 (x) of the PPA provides for restriction on the transfer of share of the Solar Power Developer and 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. 234 of 2013 is whether the date on which the shares of ESP Urja were transferred by Mr. Nitin Manawat and Mrs. Lakshmi Manawat to SunEdison India was by or before 31.05.2010, the date of PPA as claimed by ESP Urja or after 31.05.2010 as claimed by GUVNL.

3. Appeal no. 290 of 2013 filed by ESP Urja is regarding 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. In Appeal no. 234 of 2013, GUVNL has pointed out discrepancies in the claim made by ESP Urja as to

the date of transfer of shares and acquisition by SunEdison Energy India Pvt. Ltd. (hereinafter referred to as SunEdison) which is stated to be 29.05.2010. GUVNL has submitted that the transfer of shares to SunEdison was after 31.05.2010, 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.

4. The brief facts of the case are as under:-

- i) Government of Gujarat on 01.08.2009 approved the proposal for establishing a 5 MW Solar Power Project by M/s Environmental System Products Pvt. Ltd. as per its Solar Power Policy. On 28.05.2010, at the request of M/s. Environmental System Products the State Government accepted the proposal for transfer of the allotment of the project to a Special Purpose Vehicle viz. ESP Urja.

- ii) ESP Urja was incorporated with a paid up capital of Rs. One lakh comprising 10,000 equity shares of Rs. 10/- for the development of Solar Power Project. The above 10,000 equity shares were held collectively in the names of Mr. Nitin Manawat and Mrs. Lakshmi Manawat.

- iii) On 29.05.2010, a Share Purchase Agreement was signed between Mr. Nitin Manawat, Mrs. Lakshmi Manawat, SunEdison India (hereinafter referred to as SunEdison) under which Nitin Manawat and Lakshmi Manawat transferred 9999 equity shares in ESP Urja to SunEdison after an initial consideration of Rs. 1000/- was paid by cash on the date of transfer of shares.

iv) On 31.05.2010 a PPA was entered into between ESP Urja and GUVNL. Article 4.1(x) and 9.2.1 of the PPA provided as under:

“Article 4

4.1 Obligation of the Power Producer:

.....

(x) Power Producer shall continue to hold at least 51% of equity from the date of signing of this 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

Term, Termination and Default:

Event of Default:

9.2.1 Power Producer’s Default: The occurrence of any of the following events at any time during the term of this Agreement shall constitute an Event of Default by Power Producer

.....

g. Disinvestment of equity below minimum percentage holding during lock-in period as mentioned in Article 4”.

- v) On 24.09.2010, GUVNL issued Default Notice proposing termination of the PPA.
- vi) ESP Urja filed a Petition before the State Commission seeking declaration that the Appellant is not entitled to terminate the PPA, challenging the validity and enforceability of Article 4.1(x) of the PPA and also that the share transfer had taken place prior to 31.05.2010.
- vii) The State Commission by the impugned order dated 08.08.2013 decided the Article 4.1(x) and Article 9.2.1 (g) of the PPA are valid and enforceable, rejecting the contention of ESP Urja but held that GUVNL has not been able

to establish that the transfer of 9999 shares of ESP Urja to SunEdison took place only after 31.05.2010.

5. GUVNL has made the following submissions:
 - i) The onus to prove that the share transfer had taken place prior to the date of signing of the PPA was on ESP Urja and not GUNNL.
 - ii) 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 ESP Urja. The existence of such discrepancies should naturally lead to an adverse inference in law against ESP Urja.

- iii) The State Commission ought to have analysed the effect and extent of discrepancies in the documents and claims made by ESP Urja. However, the State Commission has mechanically concluded that GUVNL has not been able to prove that the documents are manipulated.

- iv) There is no proper explanation as to the reasons for execution of the Share Purchase Agreement on 29.05.2010 providing for various condition precedents for transfer of shares including the condition that the Transferor shall not sell the shares before the date of agreement and closing, when the share transfer also was to take place on the very same day i.e. 29.05.2010.

- v) The certificate issued by HDFC Bank speaks that the consideration for transfer of shares was paid by SunEdison from 09.06.2010 onwards till 20.02.2012 by transfer to promoters of ESP Urja. This provides that on 29.05.2010 no amount was paid by SunEdison to ESP Urja or its shareholders. It is also clear from the documents that the Resolution of the Board of Directors of shareholders of ESP Urja was passed on 29.05.2010 for execution of Share Purchase Agreement.
- vi) The presumption of transfer being valid as per the provisions of Section 164, 195, etc. of the Companies Act, 1956 as per the records maintained by ESP Urja viz., the Board

Resolution, the Register of Members, the Register of Share Transfer, etc., is not valid.

- vii) The other circumstantial evidence of the Press Release made in July 2010 by SunEdison in which there is no disclosure of any acquisition by SunEdison Group of ESP Urja whereas other acquisition of projects including a project of 1 MW was disclosed.
- viii) The State Commission erred in relying on Section 5 of the Sale of Goods Act and Section 46 of the Companies Act 1956 to conclude that there can be oral agreement of transfer of shares and it is not necessary to execute the Share Purchase Agreement.

6. ESP Urja has made detailed submissions to the effect that the shares of ESP Urja were transferred to SunEdison prior to the date of the PPA.

7. In Appeal no. 290 of 2013, ESP Urja has submitted as under:

“The Commission committed an error in law in upholding the validity of Article 4.1(x) of the PPA.

- *The meaning of Article 4.1(x) is not certain nor is it capable of being made certain and therefore, this provision is void and unenforceable.*
- *By a reading of Article 4.1(x), it is evident that disinvestment of equity can only be by the person who hold the equity and since Article 4.1 (x) refers to the Power Producer holding equity of 51%, any restriction placed on disinvestment by virtue of Article 9.2.1(g) can only apply to the Power Producer and not to the shareholders of the Power Producer.*

- *The intention of the parties needs to be found in the words used in Article 4.1(x) and not outside the provisions of the PPA, as done by the Commission. The opening sentence of Article 4.1(x) is crystal clear as to the obligation of the Power Producer to hold 51% equity.”*

“2. The Commission was not correct in holding that the meaning of Article 4.1(x) of the PPA can be made certain and unambiguous by construing the expression “Power Producer” as referring to the shareholders of the Petitioner/Appellant company and in doing so, the Commission has indulged in rewriting of the PPA which is impermissible in law”.

8. On the above issues very elaborate submissions were made by Shri M.G. Ramachandran, Learned Counsel for GUVNL and Shri S.N. Soparkar, Learned Senior Counsel for ESP Urja. Shri S.N. Soparkar,

Learned Senior Counsel also filed voluminous documents in support of his contentions.

9. The following issues arise for our consideration in the present case.

i) Whether the 99.99% shares of ESP Urja were transferred to SunEdison prior to the date of the PPA?

ii) Whether the Article 4.1(x) of the PPA is valid and enforceable?

10. Let us take up the first issue and consider the contentions of the ESP Urja in regard to transfer of shares of ESP Urja to SunEdison prior to the date of the PPA. Shri Soparkar, Learned Senior Counsel has explained the sequence of events of the transfer of shares with the help of the supporting documents.

11. We find that the allocation letter of Government of Gujarat approving ESPPCL's project, *interalia*, states that the terms and conditions governing the allotment shall be those prescribed in the Solar Power Policy – 2009 of the State Government, any condition stipulated by the State Government from time to time and further as per the PPA with State Power Utilities. The Solar Policy does not provide for any restriction regarding change in share-holding of the allocatee company at any point of time. By letter dated 28.05.2010, the State Government approved the transfer of project allocation in the name of ESP Urja stating that all the terms and conditions applicable under the Solar Power Policy 2009 shall be applicable to the company.

12. The allocation did not prescribe any condition with respect to change in shareholding of the

allocated company. The conditions contained in the PPA could be effective only after the execution of the PPA.

13. Mr. Nitin Manawat and Mrs. Lakshmi Manawat decided to sell 99.99% of their shares in ESP Urja to SunEdison. We find that SunEdison, Mr. Nitin Manawat and Mrs. Lakshmi Manawat signed a Share Purchase Agreement dated 29.05.2010 through which Mr. Nitin Manawat and Mrs. Lakshmi Manawat agreed to sell their shares in ESP Urja to SunEdison India Ltd.

14. Copies of the share transfer forms as produced by the ESP Urja indicates that Mr. Nitin Manawat (for 4999 shares) and Mrs. Lakshmi Manawat (for 5000 shares) have executed duly stamped share transfer forms in favour of SunEdison. The share transfer

stamp payment through franking machine also shows the date of 29.05.2010.

15. The Minutes of the Board of Directors of ESP Urja Pvt. Ltd. dated 29.05.2010 copy of which was submitted by ESP Urja, shows the Resolution of the Board for transfer of 9999 equity shares of the company to SunEdison Energy India Pvt. Ltd. from Nitin Pramod Manawat and Mrs. Lakshmi Manawat. There is also a Resolution of the company for appointment of Pashupathy Gopalan and Mr. Rahul Sankhe as Directors of the Company. The Board also passed resolution regarding the resignation of Mr. Nitin Manawat and Mrs. Lakshmi Manawat as Directors.

16. Copy of the equity shares submitted by ESP Urja show transfer of the shares to SunEdison Energy India

Private Limited. The register of Members and Share Ledger Account of ESP Urja also indicates transfer of 4999 shares from Mr. Nitin Pramod Manawat and 5000 shares of Mrs. Lakshmi Manawat to SunEdison Energy India Pvt. Ltd. on 29.5.2010.

17. Copy of Form 32 submitted under the Companies Act, 1956 indicates that Pashupathy Shankar Gopalan and Mr. Rahul Sankhe are the Directors of the company from 29.5.2010.

18. One Mr. Sharath Coorg being a director nominated by SunEdison India signed the PPA in the presence of Mr. Bhargav Mehta and Mr. Krishna Iyer. ESP Urja Pvt. Ltd. has submitted that Mr. Sharath Coorg is the Director nominated by SunEdison India Pvt. Ltd. and Mr. Bhargav Mehta and Mr. Krishna Iyer are engaged with SunEdison India.

19. On 31.5.2010, Mr. Arun Sampathkumar, the erstwhile CFO of SunEdison India Pvt. Ltd. wrote an email to Mr. Pashupathy Gopalan, the then CEO and MD of SunEdison India stating that the PPAs were successfully signed for ESP Urja Pvt. Ltd. and Millenium Synergy (Gujarat) Pvt. Ltd. also indicating that their staff Mr. Bhargav Mehta, Mr. Narayanan, Mr. Sharath and Mr. Krishna were there till the end. A copy of email was filed by ESP Urja.

20. From the above documents, it is clear that 9999 shares of ESP Urja were transferred by Mr. Nitin Manawat and Mrs. Lakshmi Manawat to SunEdison Energy India Pvt. Ltd. on 29.5.2010. We do not find any discrepancy in the documents. We feel that no adverse inference can be derived from the absence of signatures of the Company Secretary or an authorized

signatory of the company on the Register of Members and Share Ledger Account alone.

21. One issue raised by GUVNL is that since major portion of consideration for purchase of share was paid to the seller of the shares after the signing of the PPA, therefore, the share transfer was incomplete on the date of signing of the PPA.

22. We find from the Share Purchase Agreement signed between SunEdison Energy India Pvt. Ltd., the seller of shares and ESP Urja Pvt. Ltd. indicates as under:

- (a) Rs. 1,000 (Rupees one thousand only) on the Effective Date, i. e. Rs. 500 to Seller-1 and the balance to Seller 2,

- (b) An amount equivalent to 30% (thirty percent) of the Purchase Consideration upon achieving Milestone 1.
- (c) An amount equivalent to 30% (thirty percent) of the Purchase Consideration upon achieving Milestone 2.
- (d) An amount equivalent to 25% (twenty five percent) of the Purchase Consideration upon achieving Milestone 3; and
- (e) An amount equivalent to 15% (fifteen percent) of the Purchase Consideration upon achieving Milestone 4.”

The Effective Date is the date of the Agreement.

23. Section 108 of the Companies Act provides as under:

“A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or 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 certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures.....”:

24. Thus as per Section 108 of the Companies Act, 1956 in order to effect a registration of transfer of shares, a company needs to have (i) a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and the transferee, and (ii) the relevant share certificates or letter of allotment, if shares certificates are not available.

25. The Minutes of the Board held passed on 29.5.2010 indicates that the Share Purchase

Agreement was signed on 29.05.2010 and pursuant to that the company had received transfer deeds alongwith relevant share certificate for transfer of shares of the company to SunEdison India Pvt. Ltd. Thus, the requirement of law for transfer of share certificate was met.

26. In M.S. Madhusoodhanan and Anr. vs. Kerala Kaumudi Pvt. Ltd. & Ors., (2004) 9 SCC 204, (hereinafter M.S. Madhusoodhanan), one of the parties, Mr. Mani, had sought to set aside transfer of 390 shares in favour of Mr. Madhusoodhanan on, *inter alia*, the following grounds:

- (i) The consideration for the transfer had not been agreed upon and no consideration had in fact been paid;
- (ii) No proper documents had been executed effecting the transfer;

(iii) Section 108 of the Companies Act, 1956 had not been complied with in respect of the transfers.

The Hon'ble Supreme Court relied on various minutes of meetings and resolutions to ascertain the intention of the parties and upheld the transfer of shares in favour of Mr. Madhusoodhanan.

27. In Vasudev Rachandra Shelat vs. Pranlal Jayanand Thakar, (1975) Comp Cas. 43 (SC), the Hon'ble Supreme Court held as under:

“The mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated.... We think the learned Counsel for the appellant rightly contended that, even in the absence of registration of the gift deed, the delivery of the documents mentioned above to the donee, with the clear intention to donate, would be enough to confer upon the donee a complete and irrevocable right, of the kind indicated above, in what is movable property.

....A share certificate is a prima facie evidence, under Section 29 of the [1913] Act, of the title to a share, Section 34 of the [1913] Act does not really prescribe the mode of transfer by lays down the provisions of “registration” of a transfer, In other words, it pre-supposes that a transfer has already taken place....”

28. From the aforesaid decisions, the following propositions emerge:

- i) transfer of shares vis-à-vis the company is complete upon lodgment of the duly executed and stamped transfer deeds and the registration of such transfer in the company’s register; and
- ii) a share certificate is evidence of title to the shares; a share transfer form is not evidence of title nor is the execution of share transfer form essential to transfer of

shares from the seller to the buyer. A share transfer form is necessary only for registration of transfer of shares in the records of the company whose shares are transferred, there is no requirement of a share transfer form for completing transfer of shares from the Seller to the Buyer.

29. Thus, we do not find any merit in contention raised by GUVNL that share transfer was not complete till the full payment of consideration.

30. We feel that the State Commission has deliberated in details and has correctly concluded that it has not been established by GUVNL that the share transfer took place after to the date of signing of the PPA. We find that the documents produced by the ESP Urja Private Limited indicate that the transfer of shares to SunEdison India had taken place prior to the date of

signing of the PPA. Accordingly, the first issue is decided against GUVNL.

31. On the 2nd issue, the State Commission has made a detailed deliberation and referred to various Rulings on the subject of Hon'ble Supreme Court. The relevant extracts of the impugned order are as under:

“5.2.3 There is no doubt that the expression “Power Producer” refers to the Petitioner company. However, the interpretation of the Article 4.1.(x) by the learned counsel for the Petitioner does not seem to be consistent with the overall framework of the PPA. It cannot be the intention of such a provision to refer to some other projects in future when the PPA is meant for a particular project – the 5 MW solar power project. One needs to interpret it harmoniously in relation to the other provisions and object of the PPA, and not in isolation.In response to the above, learned counsel for the Petitioner has argued that if the words and expressions in a contract provision are clear, there

is no need for any court of law or tribunal to rely on the object and purpose of a provision to determine its meaning and if at all any reliance is to be placed, such objects and purpose can only be found in the words employed by the parties in the contract provision.....”.

“5.2.4 We are unable to accept the interpretation of article 4.1.(x) by the learned counsel for the Petitioner. No doubt, the expression “Power Producer” has been described in the PPA in a particular way and it has created some problem of interpretation of the article 4.1(x), but the interpretation suggested by the Petitioner appears to be inconsistent with the framework of the PPA, the purpose of the PPA and the other related provisions of the PPA. Even if we do not look at the broader objective and purpose indicated by the learned counsel for GUVNL and limit our perspective to the provisions of the PPA, it becomes clear that there cannot be an article such as article 4.1(x) which will refer to the shareholding in respect of another project which could or could not

be undertaken by the Petitioner company. Why should GUVNL be concerned in any shareholding of the Petitioner company in any other company, which has nothing do with the 5 MW solar power project. The view of the Petitioner in this respect is entirely unsustainable. The only meaning and interpretation which is logical and appropriate is that the Article 4.1(x) refers to and puts a restriction on the entity holding the equity of the Petitioner company”.

“6.1 Shri Thakore, learned counsel for the Petitioner company, contended that it needs to be examined in the light of the principles evolved by courts as to under what circumstances it can be said that the meaning of a provision is capable of being made certain”.....

He cited in this context the following judgments:

a. Keshavlal Lallubhai Patel v. Lalbhai T Mills Limited, AIR 1958 SC 512

b. Hiralal Seal v. Sankar Lal Sharma (1969) ILR 2 CAL 503

c. Ram Ganesh Rai v. Rup Naraiian Rai, AIR 1925 All 34

d. Barkat Ram v. Anant Ram, AIR 1915 Lahore 328

e. Teamco Pvt. Ltd v. T.M.S Mani, AIR 1967 CAL 168

f. Scammel v. Ouston (1941) 1 ALL ER 40

“6.2 Though the principles enumerated above are valid, the inferences drawn by the Petitioner cannot be accepted, because authorities / judgments cited do not seem to be relevant to the present case. In each of the above cases, the court has examined the facts of the case based on the principles enunciated in section 29 of the Indian Contract Act, 1872: whether, even if the meaning of a particular provision of an agreement is not certain, it is capable of being made certain. In all these cases cited, the contract has been declared

void on the ground that it is not capable of being made certain”.

“In the case of M/s. Uttam Singh Dugal and Co. Pvt Ltd v. M/s Hindustan Steel Ltd AIR 1982 Madhya Pradesh 206 it is observed that :

“..... A reference in this connection may also be made to Section 29 of the Contract Act which says that agreements, the meaning of which is not certain, or capable of being made certain, are void. A contract can become void under the section only when its terms cannot be made certain. Mere vagueness or uncertainty which can be removed by proper interpretation cannot make a contract void. In dealing with commercial and business contracts which have been acted upon by the parties, the Court should be very slow in finding defects and to reject them as meaningless. This should be done only in extreme cases” (Para 10).

6.4.1 In fact, the case laws cited by both the Petitioner and the Respondent lead to the same

conclusion in the context of section 29 of the Contract Act. The first set of cases bring out that in order to declare a contract void under section 29 it is to be established that its meaning is not capable of being made certain. The second set of cases indicate that a contract cannot be declared void merely on the ground of vagueness or uncertainty if it can be removed by proper interpretation, i.e., the meaning is capable of being made certain.

6.5 It is feasible to make the meaning of Articles 4.1.(x) and 9.2.1(g) certain. The difficulty or apparent ambiguity arises because of the expression “Power Producer shall continue to hold at least 51% of equity share” in article 4.1.(x) and the recital to the PPA saying that ESP Urja Pvt. Ltd would be referred as “ Power Producer”. According to the Companies Act, ESP Urja cannot hold its own equity. So the 51% equity shares referred to in the above article relates and can only relate to shareholding in ESP Urja by the persons who are its shareholders and not the

shareholding of the Petitioner. The intention of the parties in respect of the two provisions of the PPA – Article 4.1(x) and 9.2.1 (g) – is obviously to stipulate that the shareholding pattern as specified therein should not change for a specific period. The idea is to provide for a lock-in period as in case of many other agreements”.

“6.10 In the above paragraphs we have discussed in detail the issue of whether Article 4.1(x) of the PPA is valid and enforceable. According to section 29 of the Indian Contract Act, 1872, a contract or an agreement, whose meaning is not certain, can be declared void only if it is not capable of being made certain. In other words an agreement cannot be declared void if it is possible to remove the ambiguity, if any, by an appropriate interpretation. As analysed above, Article 4.1(x) can be interpreted in a way that there is no ambiguity or uncertainty about its meaning. Hence, we hold that the Articles 4.1(x) and 9.2.1 (g) are valid and enforceable.

32. We fully agree with the above findings of the State Commission. Learned counsel for the ESP Urja has also fairly accepted that if the first issue is decided in their favour, nothing would survive in their Appeal.

33. Summary of our findings:

- (a) The scrutiny of the documents submitted by ESP Urja Pvt. Ltd. indicates that the shares of the company were transferred to SunEdison India prior to the date of signing of the PPA.**

- (b) Article 4.1 (x) read with Article 9.2.1 (g) of the PPAs is valid and enforceable in the present case.**

34. In view of above, both the Appeal Nos. 234 and 290 of 2013 are dismissed and the State Commission's order is confirmed. No order as to costs.

35 Pronounced in the open court on this **30th day of November, 2014.**

(Rakesh Nath)
Technical Member

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(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

Vs