

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 47/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements executed between the Petitioner and the Respondent for seeking approval of Safeguard Duty as an event under Change in Law.

Petitioner : Avaada Clean Energy Private Limited (ACEPL)

Respondents : Ordnance Factory, Kanpur (OF) and Anr.

Date of Hearing : 30.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Ankoor Sood, Advocate, ACEPL
Shri Amit Oha, ACEPL
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Rajiv Srivastava, Advocate, OF
Shri R. K. Singh, OF

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, seeking relief on account of Change in Law, namely, imposition of safeguard duty on the import of solar cells (whether or not assembled in modules or panels) by the Ministry of Finance, Government of India. Learned counsel submitted that the issue involved in the Petition stands covered by the Commission's earlier orders relating to Change in Law arising out of imposition of safeguard duty. He added that in the instant case, the Power Purchase Agreement was executed between the parties on 18.2.2018 and the project has achieved commercial operation on 14.9.2018 i.e. after the imposition of safeguard duty w.e.f 30.7.2018.

3. Learned counsel for the Respondent, Ordnance Factory, Kanpur, submitted that in terms of the PPA, the Scheduled Date of Commercial Operation (SCOD) of the project was 18.8.2018 and accordingly, the Petitioner was required to procure necessary equipments including the solar panels well in advance in order to achieve the SCOD. However, admittedly, the project achieved commercial operation on 14.9.2018



with delay of 27 days and the Petitioner has paid the liquidated damages for the said delay. Having delayed the project, the Petitioner cannot claim the benefit of the said Change in Law event.

4. Learned counsel for the Respondent, SECI, submitted that in the instant case, SECI was the implementing agency of the project and the PPA has been executed between the Petitioner and Respondent No.1, Ordnance Factory, Kanpur.

5. In rebuttal, learned counsel for the Petitioner submitted that the delay of 27 days in commissioning of the project is a separate issue and is not at all linked with the compensation payable for Change in Law under Article 12 of the PPA. Article 12 of the PPA, does not make any exclusion based on delay in commissioning of the project. Even otherwise, the SCOD of the project was on 18.8.2018 i.e. after the imposition of the safeguard duty. Learned counsel further submitted that the import of the solar modules for the purpose of the project was after 30.7.2018 and this has been confirmed through the Auditor's certificate and by the Chartered Engineers' Certificate.

6. After hearing the learned counsels for the parties, the Commission reserved order in the Petition.

By order of the Commission

**SD/-
(T.D. Pant)
Deputy Chief (Law)**

