

NCLT condoned delay in submission of EMD by Resolution Applicant and asked the CoC to reconsider the Resolution Plan.

CASE TITLE	Sreenath Finvest Private Limited & Ors vs. Pami Metals Private Limited ¹
CASE CITATION	IA(IBC) No. 900 /KB/2022 in C.P.(IB) No. 64/KB/2019
SECTIONS/ REGULATION	Section 240A of IBC, 2016
DATE OF ORDER	30.09.2022
COURT/ TRIBUNAL	NCLT, Kolkata
CASE LAW REFERRED	• <i>Swiss Ribbons v. Union of India</i>

Brief of the case:

The present application has arisen mainly because of the plan being submitted without the requisite EMD. Even though a plan had been submitted and even considered by the CoC but it was termed as non-compliant primarily due to lack of deposition of the EMD as required. Noting the fact that after initial contentions of exemption, the applicant had offered to deposit the necessary EMD, the present case essentially can be seen as the one seeking for condoning of delay in depositing the Earnest Money.

Decision:

Hon'ble NCLT disposed of the application and held that,

"We also note the submissions of the applicant that even though the CoC did not consider the EMD exemption available to the MSME, however considering the various exemptions and relaxations given to the MSME including the exemption provided in Section 240A of the code to MSME sector and relying on the ratio of the Swiss Ribbons(supra), we are inclined to grant the relief sought as set out herein.

Thus keeping in mind the main objective of the Code which is the maximization of the value of the Corporate Debtor vis-à-vis the facts and circumstances of the case as brought out herein above, We hereby revert the matter back to CoC and RP to consider the resolution plan submitted by the applicant subject to depositing of required EMD of Rs. One Crore within two days from the date of order.

23. It is made clear that the CoC shall consider the plan on its merits, with an open mind, uninfluenced by the fact that the delay occurred thus far is hereby condoned."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹ <https://ibbi.gov.in/uploads/order/c58fbfc280ff77ccc287a9e5424251f5.pdf>