

IL&FS: NCLAT accepts revised framework

The National Company Law Appellate Tribunal on Thursday rejected the objections raised by creditors over distribution of funds in the Infrastructure Leasing and Financial Services Limited (IL&FS) matter saying it would be against the public interest.

IL&FS case: Appellate tribunal accepts revised distribution framework



RUCHIKA CHITRAVANSHI
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The National Company Law Appellate Tribunal (NCLAT) on Thursday rejected the objections raised by creditors over distribution of funds under the revised distribution framework in the Infrastructure Leasing and Financial Services (IL&FS) matter, saying it would be against public interest.

"We accept the suggestion of pro-rata distribution as suggested by Union of India and the procedure as suggested by it for the purpose of completing the resolution process," said NCLAT Chairman S J Mukhopadhaya.

The board of IL&FS in an affidavit to the NCLAT had asked the tribunal to direct all financial creditors of the relevant IL&FS group entities, including group lenders, to be part of the committee of creditors — a move contested by the creditors.

"...the money invested by purchasing shares by Life Insurance Corporation of India, IL&FS Employees Welfare Trust, Central Bank of India, State Bank of India are public money, who are the shareholders," said the NCLAT judgment.

It was on December 20, 2019, when the question of shareholder's permission for resolution and distribution in terms of the agreement arose.

The government made a request subsequently to allow the shareholders to take an amount and get their shares. "A question is also raised as to whether a person who has invested money during the constitution of the companies should be paid like the lenders, financial creditors and other creditors out of the amount generated by way of resolution."

According to the new distribution network approved by the NCLAT, all resolution process costs incurred in the resolution process of the relevant group entity of IL&FS have to be settled in full.

These include fees payable to the financial and transaction advisors, legal counsels, resolution consultant, claims management consultant, independent valuers, along with costs for issuing advertisements and conducting audits. After settling the resolution process cost fully, distribution of sale proceeds will

then go to creditors of the relevant group company.

IL&FS has a total debt of ₹94,215 crore, of which the four holding companies of the group — IL&FS, IL&FS Financial Services, IL&FS Transportation Networks, IL&FS Energy Development Company — have a consolidated debt of ₹48,000 crore. This comprises 51 per cent of the total group's debt.

NCLAT with respect to the claims of SRS Orion Investments and others has taken the view that the matter should be taken up by the new management or board of directors who should take into consideration the decision of the company law board and the settlement reached between the parties.

"It will be open to the new management or board of directors of IL&FS and group companies to negotiate with SRS Orion Investments and others (applicants) for fresh terms of settlement, if they intend to change the shareholding of Hill County Properties (HCPL) and sell it to some other person," the NCLAT judgment said.

NCLAT has directed the company to place the matter thereafter before the tribunal for its approval. "Upon receipt of such approval, only the shareholding of HCPL be transferred."

While initially a distribution method in accordance with the insolvency and bankruptcy code was suggested, it was later changed in public interest.

Of the ₹94,000-crore debt, public fund creditors — entities such as pension funds, employee welfare funds, provident funds, gratuity funds, and superannuation funds — have an exposure of ₹10,173 crore, or 10.79 per cent of the total debt. Scheduled commercial banks have an exposure of ₹44,075 crore.

IL&FS board had said there could not be economic recovery from the debt contagion that infected the financial markets of the nation from the downfall of the respondent no. 1 group, "if and in the event that persons such as employees, army personnel, etc who are responsible for the security, integrity and economic prosperity are not repaid their dues, which actually constitute their hard-earned savings."

According to the new framework, all costs incurred in the resolution process of the relevant group entity of IL&FS have to be settled in full