

NCLAT'S ORDER Split group companies into 3 categories based on 12 months solvency, cash flow IL&FS Cos to be Grouped on Payment Ability

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Mumbai: The National Company Law Appellate Tribunal has asked the government and IL&FS to provide a list of group companies that have the ability to meet payment obligations in the next 12 months.

In what would lead to immediate repayment of ₹7,000 crore, the new board of IL&FS proposed final resolution plan to split the group companies into three categories based on 12 months' solvency and cash flow.

"We cannot allow banks to suffer," said a two-judge bench led by Justice SJ Mukhopadhyaya. The bench suggested that companies under the "green" category should not be put under moratorium and companies in the "amber" category should "at least provide payments to the secured creditors."

The bench asked the counsel for the government and IL&FS to propose a resolution for companies

Divide and Pay

THE THREE CATEGORIES ARE:

- **GREEN:** Cos that are able to pay all payment obligations
- **AMBER:** Cos only able to meet operational payments and senior secured debt obligations
- **RED:** Cos unable to meet obligations to even senior secured financial creditors

₹7,000 crore
Amount IL&FS claims it can service immediately

under the "red" category, which indicates that these companies are not even able to make payments which the senior secured financial creditors adding, "This is how we intend to go in this matter." According to the IL&FS resolution framework report accessed by ET, "Green", "Amber" and "Red" are categories of companies based on their ability to meet payment obligations over the next 12 months. Companies that are able to pay all payment obligations are "green", companies only able to meet operational payments and senior secured debt obligations are "amber" and those that are un-

able to meet obligations to even senior secured financial creditors are categorised as "red". According to the plan, IL&FS can service up to ₹7,000 crore immediately.

"The resolution plan submitted to NCLAT by the Uday Kotak-led board confirms and assures that the seniority of SPV's project lenders will be maintained during asset monetisation and these project



lenders will get utmost priority similar to the waterfall under section 53 of the IBC,"

said a creditor present at the hearing. "This development will bring a lot of reprieve to the project lenders of these SPVs and its stakeholders." Under Section 53 of IBC, senior secured creditors loans are cleared first and any surplus that remains thereafter is given to unsecured or subordinated creditors and thereafter to the

equity owners. The board has put 64 companies in category I. Of these 64 companies, 22 are audited, which can service interest and principal payment of up to ₹7,000 crore. These include 2 road SPVs-NKEL and JIICL, seven wind SPVs and six fund management.

"This is a positive development for senior secured creditors of SPVs where cash flows are there," said a source close to one of the lenders opposing the moratorium.

The government and IL&FS have agreed to the appointment of retired Supreme Court Judge DK Jain as a supervisor for the sale of the assets of the debt-laden group in response to a suggestion by the NCLAT at an earlier date.

IL&FS group companies have an outstanding debt in excess of ₹91,000 crore. The Mumbai bench of the National Company Law Tribunal superseded the board of IL&FS with government nominated on October 1 last year.

Of 173 operating IL&FS units, only 22 are fully solvent: report

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Infrastructure Leasing and Financial Services (IL&FS) believes the group has only 22 fully-solvent entities, which can pay off their combined debt of ₹6,605 crore, according to an asset solvency test that its new management had commissioned.

However, this figure accounts for only 7% of the group's estimated debt of ₹89,393 crore of 173 Indian subsidiaries. It also does not include the debt on the books of foreign subsidiaries and debt of domestic subsidiaries where IL&FS has no controlling interest.

The internal assessment shows that entities that hold ₹15,475 crore (18% of the total debt) cannot fully repay even senior secured financial debt,

while the entities holding the remaining ₹67,313 crore (75%) can only partly meet obligations of operational and unsecured financial creditors.

This essentially means that the IL&FS board wants lenders to continue offering debt repayment moratorium on the bulk of debt-laden group's assets.

The insolvent loans amounting to ₹15,475 crore will be allowed a full moratorium and will need to be written off by the lenders while on the remaining ₹67,313 crore, the operating and maintenance expenses will continue to be met while the remaining will be placed in escrow.

However, in partial relief to the banks, the ministry of corporate affairs has suggested that banks may be allowed to defer provisioning on these outstanding loans.

Mint has reviewed a copy of



IL&FS and its group companies had been classified into three categories—green, amber and red—based on the individual entity's network and cash flows.

this document, which was submitted to the National Company Law Appellate Tribunal (NCLAT) in Delhi on Monday.

The fully-solvent entities include only two road projects, one of the North Karnataka Expressway Ltd (NKEL) and the other of Jharkhand Infrastructure Implementation Co. Ltd, which are among the group's 19 operational roads

portfolio. The other solvent entities are eight renewable energy special purpose vehicles (SPVs), six from the fund management business and a handful from the securities, real estate and water supply projects.

The solvency test was conducted to decide which solvent assets would continue servicing debt while which

could be temporarily exempted from the payment obligations until the asset sales are completed. The solvent entities were identified on the basis of a 12-month look-ahead cash flow and would estimate if the assets are likely to generate sufficient cash to meet all operational and financial commitments.

The document assures senior lenders that they will continue to be paid from the cash generated from operating solvent assets. This will soothe secured lenders to at least operational assets who had been earlier informed by IL&FS that debt repayments would be temporarily suspended.

In a report released on 16 January, credit ratings agency

India Ratings had warned that if IL&FS were to stop repayments on debt, it could set a dangerous precedent for troubled infrastructure companies and the model of debt financing in the future.

The NCLAT bench has reserved its final order on the validity of this payment protocol for Monday, 11 February. IL&FS and its group companies had been classified into three categories—green,

amber and red—based on the individual entity's network and cash flows and its ability to repay secured and unsecured lenders. Uday Kotak said in a meeting held on 22 January with IL&FS board of directors and Injeti Srinivas, secretary, ministry of corporate affairs.

The fully-solvent entities include only two road projects, eight renewable energy SPVs, among others

IL&FS board divides group firms by financial position

NCLAT appoints former SC judge D K Jain as supervisor of resolution

SUBRATA PANDA
Mumbai, 4 February

The National Company Law Appellate Tribunal (NCLAT) on Monday directed the central government to submit a list of subsidiaries of the Infrastructure Leasing & Financial Services (IL&FS), categorised by their ability to meet payment obligations as decided by the newly constituted board of the company.



The appellate tribunal also asked the government to contact former Supreme Court judge D K Jain to be the supervisor of the operation of the resolution process.

In a meeting that took place last month between the newly constituted board of the IL&FS group, its financial creditors, and the executives of

the Ministry of Corporate Affairs, Kotak Mahindra Bank Managing Director and Chief Executive Officer Uday Kotak — the non-executive chairman of IL&FS group — said the board had classified the IL&FS group companies into three categories of green, amber, and red.

The companies under the green category are those still operating with a positive net worth and have enough cash flows to meet their one-year payment obligations to all creditors. Those under the red category are not in a position to repay even secured creditors. Those under amber have adequate cash flow for payment to secured creditors, but not enough to meet the claims of unsecured creditors.

At the meeting, it was decided that the green-category companies will continue to service their debt. Companies marked red would enjoy full moratorium. Firms under the amber category will not serve any debt obligation until the resolution process of the entire group is completed. The resolution process will be similar to a corporate insolvency resolution process under the Insolvency and Bankruptcy Code, and will ensure the seniority of lenders to such special purpose vehicles (SPVs) is maintained, the affidavit filed by the company with the NCLAT showed.

Moreover, the balance funds of the companies under the amber category will be kept in an escrow fund at the SPV level and would be used

for distribution among creditors when the SPV goes for resolution.

Also, it was decided that attempts of creditors during the resolution process. And the resolution plan, agreed to by all, will have to be made public for the knowledge of all stakeholders concerned through an affidavit filed by the Government of India before the NCLAT.

The tribunal has also directed the government to provide a list of companies incorporated within the territorial jurisdiction of India. Moreover, a separate list of companies incorporated in other countries has to be provided to the tribunal.

The next hearing will be on February 11.

GOVT SUBMITS PLAN FOR IL&FS, suggests name to supervise process

PRESS TRUST OF INDIA
New Delhi

THE government on Monday submitted the debt resolution plan for crisis-hit IL&FS to the NCLAT and also suggested the name of retired Supreme Court judge Justice D K Jain to supervise the entire process.

The entire resolution process would be based on the principles enunciated in the Insolvency and Bankruptcy Code. Under the plan, the government has categorised IL&FS group companies into green, amber and red based on their respective financial positions.

The corporate affairs ministry has fixed September 30, 2018 as the cut-off date for entertaining the claims submitted by the lenders.

On October 1 last year, a newly-appointed board took over the reins of IL&FS.

"During the conduct of the resolution process of the IL&FS group, payments will be permitted only to maintain and preserve the going concern status of the companies of the IL&FS group," the ministry said in its affidavit detailing the resolution plan.

According to the ministry, it would maintain the waterfall system during asset monetisation, wherein the seniority of lenders would be maintained as is



done under the IBC.

"The distribution of the sale proceeds would be in accordance with the waterfall mechanism specified under section 53 of the IBC," it added.

Under Section 53 of IBC, senior secured creditors loans are cleared first and any surplus that remains thereafter is given to unsecured or subordinated creditors and thereafter to the equity owners.

"... We allow the counsels for Union of India and IL&FS to contact Justice (Retd) D K Jain, for consent and to discuss the terms and conditions of engagement including monthly fee, travelling expenses, allowance

etc," the two-member NCLAT bench said.

According to the resolution plan, a suitable eligibility criteria will be stipulated, approved by the newly appointed directors and then expression of interests will be invited for the same.

It further added that upon receipt of the recommendations, a successful bidder would be declared, who will deposit the earnest money.

Upon declaration of the successful bidder, documentation of the sale will be completed and forwarded to National Company Law Tribunal for the final approval.

According to the affi-

davit filed before the NCLAT, the classification of the IL&FS group companies is "based on a 12 month cash flow based solvency test".

Companies falling in the green categories are the entities, which will continue to meet their payment obligation.

While companies falling in amber category are those who are not able to meet their obligations but can meet only operational payment obligations to senior secured financial creditors.

Amber category entities "are permitted to make only payments necessary to maintain and preserve the going concern".

"Companies falling in the red category are the entities which can not meet their payment obligations towards even senior secured financial creditors," it said, adding that these companies would be permitted to make payment necessary to maintain and preserve the going concern status.

Over the cut-off date, it said: "Financial, operational and statutory claims and liabilities as of September 30 (Cut-Off-Date) will be invited... The Cut-off date has been kept as September 30 since the newly appointed directors were appointed by the NCLT on October 1, 2018".

Govt submits IL&FS resolution plan

PRESS TRUST OF INDIA
NEW DELHI, FEBRUARY 4

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