

NEXT HEARING ON MARCH 12 The appellate body also lifted moratorium on 133 IL&FS group companies incorporated outside India's jurisdiction

NCLAT Allows 22 IL&FS Firms to Begin Debt Repayments

The Classification

AMBER - Companies which are able to meet operational payments and senior secured debt obligations

RED - Companies unable to make payments to even senior secured financial creditors

GREEN - Companies which are able to meet all payment obligations

169 Total no of IL&FS group entities incorporated in India

22 are classified as Green

10 classified as Amber **38** classified as Red

100 other domestic IL&FS group entities have not yet been classified

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New Delhi: The National Company Law Appellate Tribunal has passed an order permitting 22 group companies of debt-laden Infrastructure Leasing and Financial Services (IL&FS) that were able to meet all payment obligations to service their debt obligations as per schedule. The NCLAT also lifted the moratorium on 133 IL&FS group companies incorporated outside the jurisdiction of India. If these companies fail to pay the obligations, lenders can take them to court and recover their dues.

The NCLAT had passed an interim order on October 15, 2018, staying all proceedings against group companies of IL&FS whose total debt is in excess of Rs 91,000 crore.

"We allow the Board of Directors (of IL&FS) to permit all 22 'green' entities and other entities which may be declared 'green' to service their debt obligations as per schedule," said the two-member bench led by Justice SJ Mukhopadhaya.

Both IL&FS and the government had requested that group

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JUSTICE SJ MUKHOPADHAYA

companies be classified according to their efficacy in debt payment. Group companies which are able to meet all payment obligations were categorised as 'green'. Those companies which are able to meet only operational payments and senior secured debt obligations were categorised as "amber" and companies unable to make payments to even senior secured financial creditors are categorised as "red".

Of the 169 IL&FS group entities incorporated in India, 22 have been classified as 'green', 10 as 'amber' and 38 as 'red'. There are 100 other domestic IL&FS group entities which have not yet been classified based on their ability to meet payment obligations.

The NCLAT has also ordered that any new additions to the 'green' category be allowed to make payments as per their payment schedule.

The government and IL&FS have requested that the 10 'amber' and 38 'red' IL&FS entities be allowed to only make those payments which are necessary to maintain the 'going concern' status during the moratorium which the government wants to be extended. If this request is granted, 'amber' companies, which can service senior secured debt, will not be required to do so under the moratorium period.

The rationale for this request,

according to the IL&FS resolution framework report reviewed by ET, is that any payment made to senior secured creditors of "amber" companies may lead to an "impairment of subordinated debt from other members of the IL&FS group."

The document stated that such impairments could adversely impact the resolution of other IL&FS group companies.

The two-judge bench also asked the IL&FS board and the government how they intended to resolve the 'amber' and 'red' entities and sought clarification as to whether they intended to form a committee of creditors as is normally done under the insolvency and bankruptcy code process.

The court also asked for a timeframe for this resolution as "the moratorium under the interim order cannot continue for indefinite period". The court also said that it would pass necessary orders if certain lenders of IL&FS group companies who had marked liens against the companies' accounts did not release the necessary funds to make 'going concern' payments.

The NCLAT has also approved the appointment of retired Supreme Court Justice DK Jain to supervise the operations of the resolution process of the IL&FS group. The NCLAT will next hear the case on March 12.



NCLAT allows 22 IL&FS group firms to service debt

AASHISH ARYAN

New Delhi, 11 February

The National Company Law Appellate Tribunal (NCLAT) on Monday allowed 22 companies placed under the “green” category by the new board of Infrastructure Leasing & Financial Services (IL&FS) and the government to start servicing routine debt obligations, according to schedule.

These debt obligations will be done within the resolution framework under the supervision of retired Supreme Court judge Justice D K Jain, a two-member Bench headed by Justice S J Mukhopadhyaya of the NCLAT said.

In a meeting that took place last month between the newly constituted board of the IL&FS group, its financial creditors, executives of the Ministry of Corporate Affairs, and Kotak Mahindra Bank Managing Director and Chief Executive Officer Uday Kotak — the non-executive chairman of IL&FS group — the board had classified the IL&FS group companies into three categories, namely ‘green’, ‘amber’, and ‘red’.

For list of 22 firms, turn to Page 6 ▶

REPAYMENT STRUCTURE

70 out of the 169 firms of the IL&FS group have been placed under 3 categories based on their ability to service routine debt

38 firms marked RED

Firms unable to repay even secured financial creditors

10 firms classified AMBER

Firms that can service only their operational debt obligations and payment to senior secured financial creditors

22 domestic subsidiaries classified GREEN

Firms that can service all their financial and operational debt; they have enough working capital for one year



Court allows 22 IL&FS Group entities to repay creditors

Lifts Moratorium | Lenders May Need To Make Heavy Provisions

TIMES NEWS NETWORK

Mumbai: The National Company Law Tribunal (NCLT) on Monday lifted the moratorium on 22 IL&FS Group companies, allowing them to repay their loans. However, lenders are in for significant bad loan-provisioning with the company stating that most group entities are not in a position to meet their debt obligations.

On Monday, the tribunal also lifted payment restrictions on 133 foreign group companies. The court order follows an affidavit filed by IL&FS, categorising group companies into international and domestic, and the domestic into further three lists — green, amber and red. The green companies were the ones generating enough cash to meet all their payment obligations, while the amber list included those who could pay only some creditors. Companies in the red list were the worst placed financially (*see graphic*).

STRUCTURE OF COMPANIES

Cos in IL&FS group 302	No. of Indian cos 169	> Amber entities (can fund ops and repay some creditors but not all) 10	
No. of overseas cos 133	OF THESE: > Green entities (which can meet all payment obligations) 22	> Red entities (which cannot meet payment obligations) 38	Cos still being assessed 100

The 22 Indian companies that are free to repay creditors include North Karnataka Expressways, which held back from repaying bondholders because of the court order. Their failure to repay resulted in a downgrade by rating agencies, forcing investors to mark down their investments. Besides this, a host of companies on the block — including IL&FS Securities and IL&FS Solar Power — along with various companies housing wind power projects are in the green list.

The companies where lenders will have to make provi-

sions are the parent IL&FS, IL&FS Financial Services, IL&FS Transportation Networks, IL&FS Energy Development Company and a host of other special purpose vehicles that are in the red list.

IL&FS Tamil Nadu Power and the road companies, which hold a bulk of IL&FS' assets, are in the amber category, indicating that lenders might need to make provisions on their exposure to these companies. Eventually, lenders may have to take a haircut as part of the resolution process. The road projects in the

amber list includes Jharkhand Road Projects Implementation Company, which was downgraded last month. Among others are the ITNL Road Infrastructure, Chenani-Nashri Tunnelway, West Gujarat Expressway and Moradabad-Bareilly Expressway.

Besides State Bank of India, other lenders of IL&FS include Bank of Baroda, Punjab National Bank, and Union Bank of India. Banks had asked the RBI to allow them to skip provisions on this loan as the company management was now controlled by the government-appointed board. However, the RBI had directed banks to start making provisions. Many banks have started making provisions in their loans to the IL&FS Group. In December, Bandhan Bank set aside Rs 385 crore in provision for its exposure to the troubled infra financier. IndusInd Bank had provided Rs 255 crore towards its IL&FS Group exposure of Rs 3,000 crore.

MORATORIUM ON DEBT REPAYMENTS OF 133 OFFSHORE ENTITIES LIFTED

NCLAT allows 22 domestic subsidiaries of IL&FS to service debt obligations

Tribunal also approves appointment of Justice D K Jain to supervise resolution process of IL&FS group

ENS ECONOMIC BUREAU
MUMBAI, FEBRUARY 11

THE NATIONAL Company Law Appellate Tribunal (NCLAT) on Monday directed 22 domestic subsidiaries of Infrastructure Leasing & Financial Services Ltd. (IL&FS) to service their operational and financial debt obligations. The tribunal has also lifted the moratorium on debt repayments by 133 offshore group entities.

The two-member bench, headed by Justice S J Mukhopadhaya, also approved appointment of former Supreme Court judge Justice D K Jain to supervise resolution process of the IL&FS group.

"We allow (companies under green categories) the board to permit the company to service debt obligations as per schedule," the firm said. The NCLAT was hearing the government plea over IL&FS group.

On October 15 last year, the NCLAT had allowed IL&FS and its 348 group entities to halt debt repayments until a resolution plan was worked out.

'GREEN' COMPANIES TO CONTINUE PAYMENTS

■ As many as 22 companies under the green category would be those that continue to meet their payment obligations

The newly-appointed board of IL&FS had subsequently decided to stop servicing debt across entities, including those that had the cash to support such repayments. This decision alarmed investors who feared that the ring-fenced special purpose vehicle (SPV) structure commonly used in infrastructure financing was being challenged.

Earlier this month, the Corporate Affairs Ministry submitted the debt resolution plan for IL&FS. The entire resolution process would be based on the principles enunciated in the Insolvency and Bankruptcy Code (IBC), as per the ministry. Under the plan, the government has categorised IL&FS group companies into green, amber and red,

■ There are 10 Amber category entities which "are permitted to make only payments necessary to maintain and preserve the going concern"

based on their respective financial positions.

As many as 22 companies under the green category would be those that continue to meet their payment obligations.

Amber category would be for those companies that would not be able to meet their obligations but can meet only operational payment obligations to senior secured financial creditors. There are 10 Amber category entities which "are permitted to make only payments necessary to maintain and preserve the going concern".

"Companies (22) falling in the red category are the entities which can not meet their payment obligations towards even senior secured financial creditors," as per the resolution plan.

Such companies would be permitted to make payment necessary to maintain and preserve the going concern status.

In another development, the Institute of Chartered Accountants of India (ICAI) will be reopening the books of the financially crippled IL&FS.

The Mumbai bench of the National Company Law Tribunal (NCLT) had, on January 1, directed the reopening of the financial statements of IL&FS, IL&FS Financial Services, IL&FS Transportation Networks between fiscal years 2012-13 to 2017-18.

In view of the substantial public interest involved in the matter, ICAI Accounting Research Foundation (ICAI ARF) will be carrying out the task, an official statement said.

The whole exercise will be independent, it said, acknowledging the Serious Fraud Investigation Office (SFIO) is also carrying out an investigation on IL&FS and its group/subsidiary/associate companies.

Being a 'section 25' company, whose purpose is not-for-profit,

ICAI ARF can outsource this assignment so that it is over within a reasonable period of time, the statement added.

The NCLT had allowed for the reopening under Section 130 of the Companies Act to ascertain financial mismanagement. The government, which took over the board of the diversified and complex IL&FS last year, wanted to check the balance-sheets of the crippled group and its two listed subsidiaries.

Earlier, SFIO and ICAI reports had indicated that the accounts were prepared fraudulently and negligently in the last five years by the previous management.

Statutory bodies including the Reserve Bank, markets watchdog Sebi and the Income Tax Department gave their 'no objection' for restating the accounts.

However, the auditors Ernst & Young-owned SRBC & Co, Deloitte Haskins & Sells and KPMG-affiliate BSR Associates had opposed the move, citing that they had no role in the alleged frauds and arguing financial accounts are made by the company and not auditors.