

## SC Upholds Order on Interim Distribution of Funds from ITNL Co

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**New Delhi:** The Supreme Court on Monday upheld the National Company Law Appellate Tribunal's September 19 order that allowed interim distribution of funds from the escrow account of Baleshwar Kharagpur Expressway (BKEL), an arm of IL&FS Transportation Networks (ITNL).

A bench led by chief justice D Y Chandrachud rejected Infrastructure Leasing & Financial Services' (IL&FS) appeal, challenging the appellate tribunal's order on the ground that it breached the "principle of equitable distribution to all creditors," a framework designed for the resolution of IL&FS group entities.

IL&FS was referred for an in-court resolution process in October 2018 for resolution of around ₹1 lakh crore debt across over 302 entities.

IL&FS and its 302 group companies are undergoing a court-monitored resolution process under the aegis of the ministry of corporate affairs, the NCLAT and NCLT. In October 2018,

### IN RESOLUTION PROCESS

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the ILFS board was superseded and replaced by nominees appointed by the central government.

The new board is tasked with resolving the debt contagion plaguing the IL&FS group. In its appeal challenging the NCLAT order, IL&FS said the interim distribution it follows is based on a different set of rules that apply to all IL&FS group companies as approved by the appellate tribunal itself.

It told the top court that the NCLAT erred in passing the order as it failed to consider that in view of the revised distribution framework, which it had approved on March 12, all creditors (including operational and other creditors) of a particular IL&FS group entity are to be treated on a similar footing, with their dues to be paid out at the time of final resolution/interim distribution of the relevant entity in accordance with the distribution mechanism.

"For an orderly resolution, it is imperative that the distribution mechanism is strictly followed with no creditor being put out in priority or preferentially. However, the NCLAT order directs distribution in terms of the distribution waterfall as per the escrow agreement," the appeal stated.

Senior counsel Ranjit Kumar and counsel Raunak Dhillon argued that the NCLAT's order "creates an anomalous situation wherein two different waterfalls are to be followed during the resolution of the IL&FS Group entities." However, additional solicitor general N Venkataraman told the SC that the NCLAT order has already been implemented and money paid.