

IL&FS board directed to conclude resolution of all entities within next three months

FE BUREAU

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THE NATIONAL COMPANY Law Appellate Tribunal (NCLAT) on Thursday directed the government-appointed board of the debt-laden IL&FS to conclude resolution of all its entities, preferably, within the next three months and distribute receivables on a pro-rata basis, as was suggested by the Uday Kotak-led IL&FS Board.

The appellate tribunal also said the National Company Law Tribunal (NCLT) or the appellate tribunal has ample power to pass interim order in terms of Section 242(4) of the Companies Act and there was no need to modify or recall such orders issued earlier. "In India, there is no provision for group insolvency. IL&FS and its entities, being financial service providers, no application under Section 7, or 9 or 10 of the Insolvency and Bankruptcy Code (IBC) can be filed against them. Parties have to move before the tribunal by filing petition for winding-up," the NCLAT said in its Thursday order.

In an affidavit submitted to the appellate tribunal on January 9, 2020, the IL&FS Board had submitted a revised distribution framework for distribution of the financial bid amounts/termination amount and set-



tlement amounts for all set of creditors.

It wanted to recover the resolution process costs first and then, up to the liquidation value to the creditors in accordance with the waterfall mechanism under section 53 of the IBC and the excess amount was proposed to be distributed on a pro-rata basis to each class of creditors of the relevant group company.

"The maximisation of the asset and distribution of it to all the stakeholders are the object to be kept in mind while following any resolution framework for the IL&FS group companies," the NCLAT said, adding that October 15, 2018, would be treated as the cut-off date for initiation of the resolution process of the IL&FS and group companies.

Of the 302 IL&FS group companies, with a combined debt of around ₹91,000

crore, as on March, 2018, 133 were incorporated outside India and as such are outside the territorial jurisdiction.

The remaining 169 companies, incorporated domestically, have been divided into three categories on the basis of their debt servicing ability. 'Green' entities are those which can pay all their obligations while 'ambers' are those that can meet their obligations only partially. 'Reds' are those which cannot meet any of their obligations.

In order to not have any contagion effect on the financial markets and the NBFC sector, the government too stepped in and got the NCLT permission on October 1, 2018, to supersede the Board and appointed a six-member board with Uday Kotak as the non-executive chairman. Though the NCLT Mumbai had allowed a change of management of IL&FS, it rejected, on October 12, 2018, its plea for a moratorium on payments.

The NCLAT also allowed applications for renewal of the fixed deposits and allowed them to be renewed for another period of three months. Other Interlocutory Application in which other prayer has been made will be taken up on the subsequent dates as may be fixed. The appellate tribunal has scheduled on April 14 the matter for 'orders'.