

Directors unlikely to get immunity as ITNL arm undergoes insolvency in Spain

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WHILE THE new board of IL&FS and the directors appointed by it on the subsidiaries of Infrastructure Leasing & Financial Services Limited (IL&FS) have immunity from prosecution in India for the actions of the group in the past, they may not have the same protection in cases filed against the group firms outside the country.

Last month, a Spanish court, while admitting a mandatory insolvency of Elsamex S.A.U — a subsidiary of IL&FS Transportation Networks Ltd (ITNL) — said that

the firm's directors, including CS Rajan, Bijay Kumar and Dilip Bhatia will be liable for penalties if they fail to cooperate with the insolvency process initiated by the lenders of the firm in Spain.

“The bankrupt and their administrators should be warned of the duty to appear before this Court as many times as they are called and to collaborate in everything that is required with the Insolvency Administration, under prevention of incurring otherwise in how many criminal or civil liabilities arise. In this case, the duty falls to the administrators of the legal entity or those who have held the position in the previous

two years, who are the following members of a Board of Directors made up of: Fernando Bardisa Jorda, Rafael Beneyto De Garnica, Bhatia Dilip Lalchand, Kumar Bijay, Rajan Chandra Shekhar, Elpidio Sánchez Marcos Sánchez y Smale,” said the Madrid Mercantile Court order of July 31.

An official spokesperson of IL&FS declined to comment on the issue of international immunity for them. Under Spanish law if a company is unable to service its debt for two straight months, it should approach the court for voluntary insolvency. In the case of Elsamex, there has been a delay in filing of voluntary insolvency.