

# NCLAT asks IL&FS board to pay lenders on pro-rata basis

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The National Company Law Appellate Tribunal (NCLAT) has directed the new board of Infrastructure Leasing & Financial Services (IL&FS) to pay lenders on a pro-rata basis first as opposed to the normal course of payment prescribed under Section 53 (distribution of assets) of the Insolvency and Bankruptcy Code (IBC). This will be done as part of the interim distribution.

“We are of the view that IL&FS and its entities may take all steps to complete the resolution process as per the resolution framework and submit their application for approval before the NCLT by June 30, 2022,” the NCLAT said.

Raj Bhalla, partner at law firm MV Kini, explained shareholders should not be paid by the procedure under Section 53 of the IBC because this would be against the public interest. “The investment was made by its shareholders: LIC,

IL&FS Employees Welfare Trust, Central Bank of India, and State Bank of India. They have public money. The NCLAT also directed the said distribution shall abide by the final resolution of IL&FS entities according to the resolution framework. However, a few entities have been kept out,” he said.

As of December 31, 2021, 191 IL&FS Group entities have been resolved (basis filings done with various courts and tribunals) by way of sale, liquidation/ closure or transfer/ proposed transfer to the Infrastructure Investment Trust (InvIT) set up in accordance with the Sebi (Infrastructure Investment Trust) Regulations, 2014 (InvIT Regulations). “As of December 7, 2021, approximately ₹16,742 crore of cash was available with various IL&FS Group entities,” the NCLAT said.

The interim distribution will be for ₹16,361 crore — ₹11,296 crore in cash and ₹5,065 crore in InvIT units.