

SFIO can Resume Proceedings against ex-IL&FS Auditors: SC

Court also directs NCLT to decide on govt plea seeking 5-year ban on BSR & Deloitte Haskins

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New Delhi: The Supreme Court on Wednesday allowed the Serious Fraud Investigation Office (SFIO) to resume criminal proceedings against former auditors of IL&FS Financial Services—BSR & Associates LLC and Deloitte Haskins and Sells LLP—for their alleged role in financial irregularities at the firm.

It also directed the National Company Law Tribunal (NCLT) to decide the government's plea seeking a five-year ban on the auditors for failing to red-flag problems at the lender.

Setting aside the Bombay High Court's April 2020 judgement that quashed criminal prosecution initiated against the two firms and their chartered accountants, a Supreme Court bench led by Justice MR Shah said SFIO could proceed with its 2019 criminal complaint before a Mumbai court on its own merits.

The bench said auditors were answerable for account statements signed by them even if they resig-

ned later.

The financial affairs of the IL&FS Group came under scrutiny in 2018 after it defaulted on short-term and long-term debt obligations of ₹91,000 crore. IL&FS Financial Services (IFIN) was audited by BSR, a KPMG-affiliated firm, in FY19 and jointly by BSR and Deloitte in FY18.

Deloitte was the sole auditor of the firm in FY16 and FY17.

Deloitte said its term as an auditor ended in 2018, while BSR said it resigned from the role just days af-

FAILING TO RED FLAG



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ter the government moved the ban application.

SFIO, a probe agency under the Ministry of Corporate Affairs, had filed a criminal complaint against 30 parties in the IL&FS case, including Deloitte and BSR, accusing these auditors of colluding with executives of IFIN to conceal facts and

fraudulently falsifying the books of accounts, and thereby the financial statements from FY14 to FY18.

SFIO had claimed that the audit firms had acted in breach of auditing standards and failed to detect financial inconsistencies at IL&FS.

While upholding the constitutional validity of Section 140(5) of the Companies Act 2013 that deals with the removal and resignation of auditors, the apex court held the provision was not discriminatory, arbitrary, or violative of Articles 14, 19(1)(g) of the Constitution (right to carry on their profession), thus rejecting the stand of the firms.

However, the court clarified that it had not expressed anything on the merits of the allegations against the auditors and it was for the NCLT to pass an order. With regard to the plea that the penalty in the form of an automatic disqualification of the auditors and the entire firm, including partners, and that too for five years, was highly disproportionate, the SC said it was ultimately for the legislature/Parliament to provide the debarment.

Rejecting the stand of the auditors that the disqualification is akin to civil death and as the removal provisions impinge upon their fundamental rights, the bench said it was a very serious misconduct and, therefore, the necessary consequence should follow.