

IL&FS case: HC quashes MCA plea to ban Deloitte, KPMG

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In a major relief to the former auditors of IL&FS Financial Services (IFIN), the Bombay High Court (HC) on Tuesday quashed the criminal complaint against Deloitte Haskins & Sells and BSR Associates, an affiliate of KPMG, filed by the Serious Fraud Investigation Office (SFIO) terming it unsustainable.

However, the court upheld the constitutionality of Section 140 (5) of the Companies Act, 2013, but said it is not applicable to auditors who have resigned.

BSR & Associates resigned in June 2019, while Deloitte's term ended in 2018. The National Company Law Tribunal (NCLT) cannot ban Deloitte and BSR for five years under the said Section.

The HC also set aside the order of the tribunal in August last year wherein it had rejected the objections raised by the auditors on the maintainability of the petition filed by the government to ban the auditors for five years when they have resigned. The auditors had said proceedings against them under Section 140 (5) do not hold. The tribunal had earlier said that it had the jurisdiction to ban the auditors

HOW THE CASE UNFOLDED

2019

June: MCA moves NCLT, seeks ban on IFIN auditors for five years

- Deloitte, BSR question tribunal's jurisdiction

August: BSR drags MCA to high court against NCLT's order; Deloitte moves NCLAT

October: Deloitte joins BSR in questioning the constitutional validity of Sec 140 (5) of the Companies Act

2020

March: NCLAT rejects auditors' plea challenging impleadment by MCA

April: HC quashes criminal complaint against IFIN auditors but upholds constitutionality of Sec 140 (5)

even if they have resigned.

The court on Tuesday upheld this view. The Bench was presided over by Chief Justice Dharmadhikari and Justice Borkar. Meanwhile, the government sought a stay on the quashing of criminal complaint against the auditors for a period of eight weeks, so that they can appeal in the apex court. Turn to Page 11 ▶

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The same was granted by the court despite opposition from the auditors' lawyers. However, during the eight-week period, the interim protection granted to the auditors in criminal proceedings will continue. Thus, the government cannot take action against the auditors.

In August 2019, the NCLT had rejected the appeal of the auditors who had questioned the tribunal's jurisdiction in banning them for five years under Section 140 (5) of the Companies Act, 2013, and had said it would move ahead with the Ministry of Corporate Affairs' (MCA) application banning them.

Meanwhile, the auditors had moved the Bombay HC against the constitutional validity of Section 140 (5) as well as the MCA's plea to ban them for five years.

Law firm AZB, along with Darius Khambatta, Navroz Seervai, and Sujay Kantawala, were representing BSR Associates.

Veritas Legal was representing Deloitte in the case.