

ALLEGED ROLE IN HELPING HIDE BAD LOANS AT IFIN

Govt Moves NCLT to Seek 5-yr Ban on Deloitte, BSR

Tribunal directs MCA to provide chargesheet to audit firms, gives them 10 days to respond

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Mumbai: The central government on Monday took the unprecedented step of seeking a ban on auditors Deloitte Haskins & Sells and BSR & Co for their alleged role in helping hide bad loans at the bankrupt IL&FS Financial Services.

The government sought a five-year ban under Section 140 of the Companies Act, the first time it has invoked this provision to debar an auditor. The proposed ban, if accepted, would prevent the two firms from auditing any listed or unlisted company, including banks and nonbanking financial companies (NBFCs), for five years.

No Half Measures

- UNDER CLOUD**
Govt makes case against Deloitte Haskins & Sells and BSR & Co
- Alleges they helped company hide bad loans
- Section 140 of cos law invoked to seek ban
- Govt says auditors' duty to ensure loans properly secured

SERIOUS IMPLICATIONS

- Ban will impact listed and unlisted cos, including banks and NBFCs
- Most Indian cos had moved to Big Four after audit rotation in 2017
- 67% Mkt cap of listed cos audited by Big 4 in India
- MNCs operate in India through their affiliate firms due to domestic regulations
- Deloitte said it cannot be removed as it no longer audits IFIN

The National Company Law Tribunal, where the application was moved, asked the government to dispatch the 800-page chargesheet filed by the Serious Fraud Investigation Office to the audit firms.

This, after the lawyers representing the audit firms and some of their executives accused in the case said they have not been served with the documents including the chargesheet and that they need time to prepare and respond to the

ministry of corporate affairs' (MCA) allegations.

The government lawyers conceded that they had served an electronic version of the chargesheet to BSR & Co on Monday morning and that they are yet to send the documents to Deloitte. The NCLT gave the audit firms 10 days and set the next date of hearing on June 21.

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There have only been a few occasions where an auditor has been barred from practicing. Last year, the Securities and Exchange Board of India (Sebi) banned PwC for two years after it found the auditor guilty in the Satyam Computer fraud case. However, the ban did not extend to unlisted companies. Last Monday, Reserve Bank of India banned EY member firm SR Batliboi from auditing commercial banks for one year starting April 1, 2020, citing lapse in statutory audit.

Government representatives told the NCLT that it was the auditor's duty to ensure that the loans and advances of an NBFC are properly secured. They alleged that in IFIN's case, the divergence between the net worth of the borrower and the amount borrowed was huge. For instance, one company which had borrowed ₹385 crore had a net worth of only ₹85 crore, while another with a net worth of ₹9 crore had managed to borrow ₹223 crore.

The lawyers argued that the auditors were aware of funding of defaulting borrowers for principal and interest payments. "The loans were transferred by mere book entry and resulted in the closure of old loans. The new loans didn't require provisioning or recognition as NPA (non-performing asset). Hence the assignment of the same was prejudicial to the interest of the company. The auditors having the knowledge of the same had not reported the same in the audit report," the

SFIO chargesheet alleged.

The SFIO alleged that the auditors suppressed the information of various loans, inflated profits and presented a rosy picture.

"Investigations revealed that the auditors, along with their engagement teams of IFIN did not perform their duties diligently. The auditors, despite having the knowledge of the funding of the defaulting borrowers for principal and interest payments, failed to report in the auditors' report for FY 2013-14 to FY 2017-18," the agency alleged.

The lawyers representing Deloitte, however, argued that the firm was no longer the auditor of IFIN and hence the Section 140 of the Companies Act does not apply to them. IFIN was audited by KPMG affiliate BSR & Co in 2018-19 and jointly by BSR and Deloitte Haskins & Sells in 2017-18. Deloitte was the sole auditor of IFIN in 2015-16 and 2016-17.

The government has also made the Reserve Bank of India (RBI), Sebi and the Institute of Chartered Accountants of India (ICAI) as respondents in the case. This, said the government, was to make sure that if these auditors are banned, the execution of the order is done effectively by the respective regulator.

Some of the senior executives in Deloitte and BSR who were part of the IFIN audit are also respondents in the case.

Sanjay Shorey, joint legal director in the ministry of corporate affairs, represented the MCA while Janak Dwarkadas, senior counsel, appeared for Deloitte.
