

## Former IL&FS auditors again question NCLT jurisdiction to ban them

### PRESSTRUST OF INDIA

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FORMER AUDITORS of IL&FS group, Deloitte and BSR Associates, Friday reiterated their contention that the NCLT has no jurisdiction to ban them saying existing law says only those auditors on board can be penalised.

Deloitte Haskins & Sells and BSR Associates, which is an affiliate of KPMG, are no longer the auditors of the crippled IL&FS group, with the former resigning in FY18 and the latter as recently as last month. But the Corporate Affairs Ministry has sought a five-year ban on them for their failure to do the statutory job properly.

Representing Deloitte, Janak Dwarakadas argued that Section 140(5) of the Companies Act does not apply if the auditors are no longer with a company. The said

section deals with resignation of auditors. "Section 140(5) is only applicable to existing auditors," he said and pointed out that Deloitte had retired due to rotational laws in FY18. "Section 140(5) has a limited purpose to remove or change an auditor, (and not punish them)", he said adding SFIO findings against Deloitte are subject to legal challenges.

Echoing similar views, BSR counsel Darius Khambata also said the Companies Act says an auditor can be punished only under Sections 132 and 447, while Section 140(5) allows the government to only remove an auditor. Countering these arguments, ministry's counsel Sanjay Shorey said once there is an allegation of fraud, consequences will follow. An auditor cannot be absolved of consequences of his past omissions and commissions in the name of "interpretation", he added.