

MCA Plans to Move SC Against IFIN Auditors

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Mumbai: The Centre plans to contest in the apex court a Bombay High Court ruling that disallowed a government petition that had sought to take action against Deloitte and KPMG-affiliate BSR & Associates LLP, auditors of the crisis-hit IL&FS Financial Services (IFIN).

A top official source said the Ministry of Corporate Affairs (MCA) is going to contest the order primarily on the “question of law”.

“The two primary questions we would like the apex court to address are: If the auditor has retired before the filing of the petition, should the company be exonerated from charges of fraud as seen in the case of Deloitte, and what should be done if an auditor being probed has resigned during the pendency of the trial? These are important questions as the probe has found the auditors liable of fraud,” said a senior government official.

In its order, the high court upheld the constitutionality of section 140(5) of the Companies Act, which seeks removal of existing auditors, but said that it would not apply to auditors that have resigned. Deloitte Haskins & Sells (DHS) had been auditors at IFIN but rotated out in FY18. BSR & Associates, which took over, resigned from their role as auditors in June 2019.

The court has given eight weeks to MCA to challenge the ruling in the Supreme Court.

The IL&FS crisis first came to light in July 2018 when the road arm was facing difficulty in making repayments due on its bonds. Multiple agencies are probing the alleged irregularities at IL&FS, including the Enforcement Directorate (ED) and the SFIO.

In May, 2019, SFIO filed an over 800-page chargesheet before a special court in Mumbai against 30 individuals and entities, including Sivasankaran and nine former directors, auditors BSR & Co LLP and Deloitte Haskins & Sells (DHS) LLP, audit committee members and independent directors.

The SFIO alleged that the auditors “connived, colluded with the coterie” to conceal material information and fraudulently falsified the books of accounts, and thereby financial statements from FY13-14 to FY17-18. It said the auditors “knowingly did not report the true state of affairs of the company,” particularly the negative net owned funds and the negative capital to risk asset ratio, which resulted in losses for those who invested in its non-convertible debentures.

In August 2019, KPMG’s affiliate BSR & Associates had moved the high court seeking relief from NCLT proceedings that sought a five-year ban on former auditors of IFIN. Later, Deloitte also moved the high court, seeking similar relief to that of BSR & Associates.