**Deloitte Haskins and Sells Questions the Ambit of the Powers of NCLT**

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Deloitte Haskins and Sells, an auditing network firm of Deloitte India has challenged the power of the National Company Law Tribunal (NCLT) to ban the auditors in case there is some financial failure in the company.

The section 140(5) of the Companies Act 2013 gives power to the NCLT to impose a ban on the statutory auditors of the company either suo moto or after a plea by the Central Government for the same.

Deloitte Haskins and Sells have challenged the constitutional validity of the above provision of the Companies Act as well as the Central Government’s application for imposing a ban of five years on the previous auditors of IL&FS Financial Services.

A senior advocate appearing on behalf of Deloitte said that the facts of the case are very much similar to the plea filed by BSR & Associates LLP which is an affiliate of KPMG.

Last month the court had put a stay on the proceedings against the audit firm against the order of NCLT Mumbai as a temporary relief to BSR.

A senior counsel appearing for BSR said that the very power of putting a statutory ban on the auditors of a company is what has been challenged and is under investigation. He also said that when the government sought to move NCLT for imposing a ban on the company’s auditors, the auditors had already resigned by that time and so the company does not know what to how to remove a person from the company who has already resigned from his position.

If NCLT passes an order under section 140(5) of the Companies Act 2013 against a person, the said person cannot be appointed as an auditor for the next five years. The counsel has argued that this power given to NCLT is ultra vires that it calls only proceedings where the NCLT has sole discretion.

The above provision is only for auditors and not for promoters the counsel said adding that where the management of the company is at fault they have a right to be heard but not the auditors. It is injustice for the auditors.

A division bench of Justice Ranjit More and NJ Jamdar has adjourned the case till October 16th 2019.