

- **Supreme Court affirms that resignation won't protect auditors guilty of fraud from NCLT proceedings u/s 140(5) of the companies act, 2013**
 - In the instant case, the Ministry of Corporate Affairs, upon receipt of a report from the Registrar of Companies under **section 208 of the companies act, 2013**, directed the SFIO to investigate into the affairs of IL&FS and its subsidiaries (IFIN). SFIO submitted the investigation report of IFIN. Thereafter, the SFIO filed a criminal complaint on 30-5-2019 before the Sessions Court (Special Judge - Companies Act), against, amongst others, the auditors/ex-auditors of IFIN.
 - The MCA filed a petition under section 140 (5), inter alia, against the auditors of the IFIN, namely, BSR & Deloitte and the engagement partners as well as their team. In the petition under **section 140(5) of the companies act, 2013**, it was inter alia prayed to remove BSR as auditors of IFIN and to declare that Deloitte would be deemed to be removed as Statutory Auditor for IFIN for Financial year 2012-13 to the financial year 2017-18. Further, it was requested to permit the Ministry of Corporate Affairs to appoint an auditor for IFIN under the first proviso of section 140(5) and declare/direct that BSR, its engagement partners, Deloitte and its engagement partners would not be eligible to be appointed as an auditor for any company for a period of five years under the second proviso of section 140(5).
 - Deloitte filed application challenging the maintainability of section 140(5) petition before the NCLT on the ground that Deloitte was no longer the auditor for IFIN. BSR and its engagement partners also filed an application challenging the maintainability of section 140(5) petition before the NCLT on the ground that BSR was no longer the auditor for IFIN. However, the NCLT passed an order upholding the maintainability of section 140(5) petition. Thereafter, the BSR filed a writ petition before the High Court, inter alia, challenging the vires of section 140(5); the directions issued and the order of the NCLT upholding the maintainability of section 140(5) petition.
 - High Court upheld the validity of section 140(5), the High Court held that once the auditor resigned as an auditor or was no more an auditor on his resignation, thereafter section 140(5) proceedings were no longer maintainable as the petition filed by the Union of India under section 140(5) had been satisfied by the subsequent resignation of the auditor. The High Court set aside the order passed by the NCLT.
 - The Court observed that on true interpretation and scheme of Section 140(5) of the Act, 2013, once the enquiry/proceedings is/are initiated under first part of section 140(5) of the Act, either suo motu by the Tribunal or on an application made to it by the Central Government or by any person concerned, it must come to its logical end and irrespective of the fact whether during such enquiry/proceedings the auditor has resigned or not, there must be a final order to be passed by the Tribunal on whether such an auditor has, in fact, directly or indirectly, acted in a fraudulent manner or not.
 - The Court further held that if the High Court's interpretation holds true, stating that once an auditor resigns, the proceedings under section 140(5) are automatically terminated and need not proceed any further, it could potentially create a situation where auditors, in order to escape the final order and the associated consequences outlined in the second proviso to section 140(5), may strategically resign to evade any adverse rulings by the Tribunal. The court emphasized that an auditor, whether directly or indirectly involved in fraudulent activities, should not be allowed to resign solely to circumvent the repercussions specified in the second proviso to section 140(5).