

# Treatment of an Attachment under Benami Act in Liquidation Proceedings Under IBC: Supreme Court on NCLT and NCLAT's Jurisdiction

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## Introduction

In *S Rajendran v Deputy Commissioner of Income Tax (Benami Prohibition) & Ors* 2026 SCC OnLine SC 298, the Hon'ble Supreme Court considered whether the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT), exercising jurisdiction in the course of liquidation proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC), can entertain a challenge to an order of provisional attachment passed under the Prohibition of Benami Property Transactions Act, 1988 (Benami Act).

Answering in the negative, the Court upheld the view of the NCLT and NCLAT and held that attachment orders under the Benami Act cannot be impugned before NCLT/NCLAT under the IBC. The Court emphasised that the IBC fora cannot be converted into a parallel appellate forum to review attachment or confiscation actions made under a self-contained statute such as the Benami Act, which provides its own adjudicatory mechanism and appellate hierarchy.

Against this backdrop, this Ergo analyses the key takeaways from the judgment.

## Factual Background

The appeals arose from a common fact pattern involving two corporate debtors (collectively, Corporate Debtors), namely Padmadevi Sugars Limited (CD 1) and Senthil Papers Board Private Limited (CD 2).

In relation to CD 1, an alleged benami arrangement surfaced during investigation proceedings linked to a search and seizure operation by income tax authorities in November 2017. The investigation suggested that the promoters of CD 1, the Patel Group, had allegedly transferred 100% of their shareholding in CD 1 to a beneficial owner, viz., Ms V K Sasikala, through an intermediary advocate (Mr S. Senthil) for a consideration of approximately INR 450 Crores which was paid in high value demonetised currency notes during the period of demonetisation in November and December 2016.

During the pendency of investigation, CD 1 was admitted into corporate insolvency resolution process (CIRP) pursuant to an order dated 15.10.2018 passed by National Company Law Tribunal, Chennai (NCLT).

In 2019 a show cause notice under the Benami Act was issued to the resolution professional (RP), characterising CD 1 as a benamidar and alleging that the sale of shares was a benami transaction. The allegation was that while the beneficial owner had paid INR 450 Crores and obtained possession of share certificates, legal title to the shares and underlying assets (sugar plant and machinery) was intentionally not transferred to the beneficial owner in the land records, allegedly to camouflage true ownership.

The authorities under the Benami Act simultaneously passed a provisional attachment order attaching the immovable properties of CD 1 including factory land, plant and machinery. The Adjudicating Authority under the Benami Act confirmed the attachment under Section 26(3).

In 2021, CD 1 was ordered into liquidation under the IBC by NCLT. The liquidator then approached the NCLT seeking (among other reliefs) a stay of the attachment, contending that the attached properties formed part of the liquidation estate of CD 1 and the attachment obstructed the liquidation process (Stay Applications).

The factual background for CD 2 was stated to be *pari materia* except that in the case of CD 2, the liquidation order under IBC was passed was prior to the order for provisional attachment under the Benami Act. The alleged benami transaction involved sale of a paper factory (land, factory, buildings) to VK Sasikala for a consideration of approximately INR 400 Crores which was paid in high value demonetised currency notes during the demonetisation period in November and December 2016.

## Orders of NCLT and NCLAT

The NCLT dismissed the Stay Applications in 2022 and appeals were filed before the NCLAT by the respective Liquidators of CD 1 and CD 2.

The NCLAT dismissed the appeals primarily on the following grounds:

- a) The Benami Act is a special, self-contained code with a complete hierarchy of remedies. The authorities deriving jurisdiction under IBC cannot function as a collateral appellate forum where the Benami Act itself provides statutory remedies.
- b) Proceedings under Benami Act are not debt recovery or security enforcement proceedings instituted by creditors. Instead, they are sovereign proceedings aimed at attachment or confiscation of tainted property. Accordingly, they are not barred by the moratorium under Section 14 of the IBC.
- c) Section 60(5)(c) of the IBC is not a power to review administrative or quasi-judicial orders passed under independent public law statutes.

## Issue Before the Supreme Court

The principal question before the Court was whether the legality and validity of an attachment order passed under the Benami Act can be challenged before NCLT and NCLAT in the course of insolvency resolution proceedings or liquidation proceedings under the IBC?

## Observations of the Supreme Court

### **Benami Act and IBC are both “special statutes”; reconciliation depends on subject and dominant purpose**

The Court noted that both IBC and Benami Act contain non-obstante clauses: Section 67 of the Benami Act and Section 238 of the IBC. Both these provisions stipulate that the provisions of the respective legislations shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Court reiterated that courts should not adopt a mechanical approach of declaring that the later enactment prevails. Instead: (a) courts must first attempt a harmonious construction so that both statutes operate in their allotted fields; and (b) if a conflict persists, courts must examine the **“dominant purpose and subject-matter”** of each of the legislations in question to ascertain which regime should govern the conflict.

Applying this approach, the Court found it significant that the properties sought to be included in the liquidation estate were already the subject of attachment proceedings under the Benami Act. Determination of whether a property is benami, and the consequences that follow (including confiscation and vesting), are entrusted by the Parliament exclusively to the authorities under the Benami Act. In other words, identifying and undertaking coercive actions vis-à-vis benami properties is the “dominant purpose” of the Benami Act. Consequently, the provisions of IBC cannot be relied upon to displace the Benami Act’s adjudicatory mechanism; similarly, authorities deriving jurisdiction under IBC cannot be conferred with the jurisdiction to reopen or indirectly review findings rendered by Adjudicating Authority under the Benami Act.

### **Section 60(5)(c) of the IBC: wide, but not unlimited—cannot trench upon public law domains**

In the instant case, the Liquidators placed heavy reliance on Section 60(5)(c) of the IBC to contend that in terms of Section 60(5)(c) of the IBC, the NCLT has wide residuary jurisdiction to adjudicate on any question of priorities or any question of law or facts, “arising out of or in relation to the insolvency resolution or

*liquidation proceedings of the corporate debtor or corporate person under this IBC*". Consequently, the residuary jurisdiction of the NCLT is wide enough to grant a stay or set aside an attachment under Benami Act where it interferes with insolvency resolution proceedings or liquidation proceedings.

The Court rejected this submission and held that Section 60(5)(c) of the IBC cannot be read as an all-purpose gateway for NCLT or NCLAT to review actions taken under independent statutes, particularly where such actions fall within the realm of public law.

The Hon'ble Supreme Court reiterated the established distinction between: (i) disputes that arise out of or are in relation to insolvency, and (ii) disputes arising de hors the insolvency. The Hon'ble Supreme Court emphasised that while the NCLT has the jurisdiction to deal with matters falling in the former category, the matters falling in the latter category must be pursued before the competent forum created by the relevant statute. In this context, the Hon'ble Supreme Court inter-alia relied on Gujarat Urja Vikas Nigam Ltd v Amit Gupta [(2021) 7 SCC 209] to reiterate that while NCLT may adjudicate disputes triggered by the insolvency process itself, it cannot be used as a "single window" forum for controversies whose source is external to insolvency and which require adjudication under an independent legal regime. The Hon'ble Supreme Court reinforced this approach by referring to its recent judgment in the matter of State Bank of India v Union of India [2026 INSC 153], where the Hon'ble Supreme Court cautioned against allowing the IBC to "make inroads" into specialised regulatory domains and rewrite rights and liabilities governed by a separate statutory framework.

The Hon'ble Supreme Court also drew support from Embassy Property Developments (P) Ltd v State of Karnataka to hold that permitting NCLT/NCLAT to stay or nullify Benami attachment would effectively elevate NCLT into a judicial review forum over sovereign action. This is an enlargement of the jurisdiction of NCLT which is not otherwise contemplated by the IBC.

The Court applied well-established principles and held that proceedings under the Benami Act are quintessentially public law proceedings which involve a sovereign and penal policy to identify and extinguish benami holdings and operate *in rem*, potentially culminating in confiscation and vesting in the Central Government such properties free from encumbrances. Determinations regarding beneficial ownership, source of funds and statutory presumptions are matters that Parliament has specifically entrusted to Benami authorities and appellate fora under the Benami Act.

### ***Benami properties do not form part of the liquidation estate under Section 36***

The Liquidators relied on Section 36 of the IBC to contend that in terms of Section 36 of the IBC, the liquidator is obliged to constitute the liquidation estate of the Corporate Debtor comprising of all the assets held by the Corporate Debtor. The Liquidators submitted that attachment over the assets of the Corporate Debtors by the authorities under the Benami Act prejudicially affected the ability of the Liquidators to constitute the liquidation estate and proceed with the liquidation proceedings.

The Court held that in terms of Section 36 of the IBC, only assets which are beneficially owned by the corporate debtor form part of the liquidation estate. Benami property, held in a fiduciary capacity without beneficial interest, is excluded and never becomes distributable in liquidation.

The Court held that the insolvency estate or liquidation estate of the Corporate Debtor is not an omnibus pool of all assets standing in the name or possession of the corporate debtor. Rather, it comprises only those assets in which the corporate debtor has "*beneficial ownership*". The Court held that benami property, by definition, is held by the benamidar in a fiduciary or representative capacity for the benefit of the real owner. Consistent with this, Section 36(4)(a)(i) of the IBC excludes assets held "*in trust*" for third parties from the liquidation estate.

The Court relied on well-established principles that a benamidar has no beneficial interest in a benami property and that title vests in the person who provided consideration. Therefore, where the corporate debtor is merely an ostensible holder of a benami property and that the property in question never truly formed part of a corporate debtor's insolvency estate or liquidation estate, such assets cannot be administered or distributed in liquidation proceedings.

The Court further noted that Section 36(3)(e) of the IBC recognises that property "*subject to determination by a court or authority*" can form part of the liquidation estate only to the extent that the determination permits such holding. Once the Adjudicating Authority under the Benami Act concludes that the corporate debtor is a benamidar, beneficial ownership stands negated (subject to appellate remedies under the

Benami Act). Accordingly, insolvency proceedings cannot be used to convert property held by a corporate debtor for another into distributable assets for creditors of the corporate debtor under Section 53 of IBC.

### ***IBC's Section 32A and Section 14 moratorium cannot be used to secure a stay on an attachment under Benami Act***

The Liquidators submitted that Section 14(1)(a) of the IBC imposes a moratorium prohibiting institution or continuation of suits or proceedings against the corporate debtor. Proceedings under the Benami Act, including provisional attachment that freezes or depletes assets, squarely fall within the ambit of "proceedings" and therefore stand interdicted during the subsistence of the moratorium. Permitting attachment of the assets of the Corporate Debtors would defeat the protective shield intended to preserve the debtor's estate as a going concern.

Additionally, the Liquidators placed reliance on Section 32A of the IBC and submitted that the said provision of IBC was introduced with the objective of insulating the corporate debtor and its property from past liabilities upon successful resolution or liquidation sale. In fact, Section 32A(2) of the IBC expressly prohibits attachment, seizure or confiscation of the property of the corporate debtor in relation to offences committed prior to commencement of the CIRP once a resolution plan is approved or assets are sold to an unconnected third party.

The Court rejected both these submissions. On Section 32A of the IBC, the Court held that the benefit under Section 32A of the IBC is event-based and operates only upon (i) approval of a resolution plan or (ii) completion of a liquidation sale to an unconnected third party. Until such an event occurs, the benefit of Section 32A of the IBC is not available vis-à-vis any of the assets of the Corporate Debtor. Further, Section 32A of the IBC is not a curative provision that validates defective title or retrospectively converts property alleged to be benami into property of the corporate debtor.

With respect to the benefit of moratorium under the IBC, the Court reiterated that moratorium is intended to preserve the corporate debtor's estate against creditor-driven recovery or enforcement actions during CIRP. It is not a blanket injunction against all statutory proceedings, especially sovereign proceedings in rem under penal statutes or confiscatory statutes. Since attachment/confiscation under the Benami Act is not in the nature of debt recovery proceedings, the moratorium does not automatically bar such proceedings.

## **Comments**

The Supreme Court's decision in this judgment is significant as it is the first time the Court examined how liquidation proceedings under the IBC are affected by contemporaneous proceedings under the Benami Act. It settles, a recurring issue as to whether a liquidators or RP can rely on Section 60(5) of the IBC as a "single window" to challenge an attachment action under a penal statute. In this regard, the Court held that the NCLT/NCLAT cannot be converted into a parallel appellate forum to challenge actions undertaken by statutory authorities constituted under a penal statute such as the Benami Act.

More importantly, the judgment also draws limits to NCLT's residuary jurisdiction and lays down guiding principles for navigating overlaps between the IBC and criminal law or public law regimes. The Court reinforced the distinction between "*arising out of insolvency*" v "*dehors insolvency*" and signalled that where the dispute concerns sovereign action (including in rem attachment or confiscation based on alleged illegality of title or beneficial ownership), the IBC fora must yield to the specialist statute and its forums.

That said, in an insolvency resolution process already burdened by uncertainty on account of litigation risk, the Supreme Court's approach may add another factor of unpredictability for a prospective resolution applicant who expects the corporate debtor's assets to be transferred on a clean slate basis. In practical terms, an unresolved attachment risk can depress financial proposals offered under resolution plans, as resolution applicants often price such risks conservatively, potentially impacting value maximisation.

Finally, an important question remains open: if a corporate debtor is acquired pursuant to an approved resolution plan, would an existing attachment be required to be vacated by operation of Section 32A of the IBC? In the instant case, the Court noted that Section 32A is an event-based protection which takes effect pursuant to the approval of a Resolution Plan and the acquisition of a corporate debtor by an unrelated resolution applicant. In the facts of the instant case, the Court held that since such an event has not yet transpired, the benefit of Section 32A of the IBC cannot be accorded to the liquidators. Having said that, the Court appears to have stopped short of explaining the consequence of an attachment under Benami

Act in the event a resolution plan for the corporate debtor is indeed approved and the benefit of Section 32A of the IBC becomes available to a successful resolution applicant.

This raises a distinct and potentially more fundamental title risk for resolution applicants in CIRP. In particular, it remains to be seen if the title to an asset of the corporate debtor remains subject to final adjudication of whether the property is a benami property, or if a successful resolution applicant can claim beneficial ownership and title to such assets by relying on the protection offered in terms of Section 32A of the IBC. The issue remains open - whether a resolution applicant can acquire a corporate debtor on a clean slate basis in insolvency resolution proceedings under IBC, or whether a past benami transaction will affect a corporate debtor's title and ownership to a tainted asset.

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