

S. Rajendran Vs. The Deputy Commissioner of Income Tax (Benami Prohibition) & Ors.

Civil Appeal No. 7140 of 2022 · Supreme Court of India · 2026-02-24 · Pamidighantam Sri Narasimha · Atul S. Chandurkar · F2J-C-1004

Full judgment text

S. Rajendran Vs. The Deputy Commissioner of Income Tax (Benami Prohibition) & Ors.

[Civil Appeal No. 7140 of 2022]

[Civil Appeal No. 6971 of 2025]

[Civil Appeal No. 6661 of 2023]

[Civil Appeal No. 6662 of 2023]

1. The present batch of appeals arises out of the impugned judgments and orders dated 18.08.2022 and 13.03.2023 passed by the National Company Law Appellate Tribunal, Chennai bench (hereinafter referred to as "NCLAT"). By the said impugned orders, the NCLAT declined to interfere with the decision of the National Company Law Tribunal (hereinafter referred to as "NCLT") and refused to adjudicate the appellant- liquidators' applications challenging the provisional attachment orders passed by the authorities under the Prohibition of Benami Property Transactions Act, 1988, ("Benami Act"), holding that the NCLT lacks jurisdiction to entertain such challenges and that the remedy lies exclusively before the competent forum constituted under the Benami Act. Accepting the concurrent findings of NCLT and NCLAT, we have held that orders passed under Benami Act cannot be questioned before authorities under the Insolvency and Bankruptcy Code, 2016 ("IBC"). For the reasons to follow, we dismiss these appeals.

I. Factual Background:

2. For the sake of convenience, we shall refer to the factual matrix of the lead appeal. The facts in the connected appeals, though pertaining to distinct corporate entity, are substantially similar in their material particulars and give rise to identical questions of law.

3. When an illegal sale, in the nature of a benami transaction came to light, investigation by the authorities under the Benami Act revealed that the promoters of the corporate debtor, M/s Padmaadevi Sugars Ltd., formerly S.V. Sugar Mills Ltd., the "Patel Group," had transferred their 100% shareholding to the beneficial owner, V.K. Sasikala, through an intermediary, an advocate named Mr. S. Senthil, for a consideration of approximately Rs. 450 Crores, paid in demonetised high-value currency notes. As investigation concluded into commission of offence, authorities invoked Section 24 of the Benami Act and issued a show cause notice dated 01.11.2019.

4. The genesis of the controversy as portrayed in the show cause notice lies in search and seizure operation conducted under Section 132 of the Income Tax Act, 1961 in November 2017 against V.K. Sasikala and her associates. During these operations, incriminating documents that were unearthed contained explicit references to asset purchases made during the demonetization period i.e. November-December 2016, through entries marked "Patel: Sugar 386 + Bank Loan" and "Sugar Mill, Kancheepuram". Further, investigation identified advocate S. Senthil as the intermediary who, upon confrontation, admitted under oath to authoring these notes at the dictation of V.K. Sasikala for purchasing these properties using demonetised currency.

5. The documentary trail was further corroborated by a subsequent search on 18.11.2017 at a serviced apartment used by the intermediary, where authorities recovered the original share certificates of M/s S.V. Sugar Mills Ltd. now Padmaadevi Sugars Ltd. standing in the names of the Patel family members, alongside an unsigned Memorandum of Understanding (MoU). Confronted with this, Shri Hitesh Shivgan Patel, representing the management of the corporate debtor, recorded a sworn statement admitting that the Patel Group had negotiated the sale of the sugar factory and assumed bank liabilities for a total consideration of Rs. 450 Crores. Crucially, he admitted that this consideration was received entirely in demonetised currency between November and December 2016, and that they

had signed a blank MoU to effectuate this transfer.

6. In the meanwhile, the corporate debtor M/s Padmaadevi Sugars Ltd. was subjected to corporate insolvency resolution proceedings (CIRP) on the basis of an application instituted by the financial creditors. The application was admitted by the NCLT on 15.10.2018 and the moratorium commenced. However, after the failure of the resolution process, NCLT proceeded further and passed an order for the liquidation of corporate debtor on 20.04.2021. We may mention at this very stage that in so far as the other set of appeals arising out of M/s Senthil Papers and Board Pvt. Ltd., the CIRP commenced on 14.11.2017, and order of liquidation was passed on 14.02.2019.

7. Returning to the proceedings under the Benami Act, based on the crystallization of the evidence as discussed above, the authorities issued a show cause notice dated 01.11.2019 under Section 24(1) of the Benami Act to the RP, representing the corporate debtor, characterizing it as the benamidar and the transaction as a "benami transaction".

The rationale provided was that while the beneficial owner, V.K. Sasikala, had paid the full consideration of Rs. 450 Crores and obtained physical possession of the share certificates through her agent, the legal title to the shares and the underlying assets (the sugar plant and machinery) was deliberately not transferred in the records. This arrangement was allegedly designed to mask the true ownership while holding the property for the immediate or future benefit of the beneficial owner. This was followed up by a provisional attachment order on 01.11.2019 under Section 24(3) of the Benami Act, attaching the immovable properties of the corporate debtor, including the factory land and plant machinery.

8. In view of the fact that the corporate debtors came to be represented by their respective liquidators, the Adjudicating Authority under the Benami Act also issued notices under Section 26(3) confirming the attachment of the property held benami by corporate debtor for and on behalf of the beneficiary V.K. Sasikala.

9. The provisional attachment order dated 01.11.2019, was initially challenged by the RP on the ground that it is void ab initio due to the moratorium under Section 14 of the IBC. However, as the corporate debtor was ordered into liquidation on 20.04.2021, application filed by the RP was rendered infructuous. Consequently, the liquidator filed a fresh application seeking a stay on the attachment order and to enable the liquidation process to continue on the ground that the attached properties formed part of the liquidation estate.

10. The NCLT took up the application and by its order dated 25.04.2022, in the case of Padmaadevi Sugars, held that the challenge to the order of attachment under the Benami Act must be before the statutory authorities under that Act and not before the authorities under the IBC. In other words, NCLT held that such an application is not maintainable under IBC. Similar orders were passed by NCLT even in case of M/s Senthil Papers on 29.03.2022.

11. Despite the clear and categorical order dated 25.04.2022 of the NCLT, the appellants filed an application for clarification about the forum before which the application is to be filed. Disposing the application, the NCLT, by order dated 14.06.2022, held that the parties can approach the authorities under the Benami Act for lifting the attachment, thereby reaffirming that it lacked jurisdiction to sit in appeal over decisions of Benami Authorities.

12. Even after the order dated 25.04.2022 and the clarificatory order dated 14.06.2022, instead of invoking proceedings under Benami Act, the appellant liquidator filed an appeal under Section 61 of IBC before NCLAT. By the judgments impugned before us, the appeals of M/s Padmaadevi Sugars and M/s Senthil Papers were dismissed on 18.08.2022 and 13.03.2023 respectively.

II. Analysis of the Impugned Orders:

13. The concurrent findings of NCLT and the NCLAT, while dismissing the applications for staying the attachment order under the Benami Act can be summarised as follows;

13.1 Firstly, both forums proceeded on the premise that the Benami Act, is a special legislation constituting a self-contained code. The NCLAT, in particular, placed heavy reliance on its earlier decision in *Kiran Shah, Resolution Professional of KSL and Industries Ltd. v. Enforcement Directorate*¹ relating to Prevention of Money Laundering Act, 2002, to hold that when a statute provides hierarchy of adjudicatory mechanisms, namely, the Adjudicating Authority, the Appellate Tribunal, and the High Court, an aggrieved party, even if it is a liquidator or RP, must exhaust the remedies in that special

statute. It is further held that IBC cannot be converted into a parallel appellate forum to review the validity of attachment orders passed by a competent authority under a specialised enactment, as doing so would render the appellate machinery of the Benami Act otiose.

13.2 Secondly, regarding the applicability of the moratorium, the Tribunals drew a sharp distinction between actions initiated by creditors for the recovery of dues and sovereign actions initiated by the State for the confiscation of tainted property. The NCLT and NCLAT held that the protection under Section 14 of the IBC is designed to shield the corporate debtor from the depletion of assets by individual creditors seeking to enforce security interests or recover debts. Conversely, an attachment under the Benami Act constitutes a sovereign function exercised in the public interest to prohibit and punish benami transactions. Since the Benami proceedings are not in the nature of debt recovery but rather a statutory forfeiture of property held illegally, the moratorium under the IBC does not act as an automated stay against such proceedings.

13.3 Thirdly, the impugned orders held that the residuary jurisdiction conferred upon the NCLT under Section 60(5) of the IBC is not allpervasive. While Section 60(5)(c) empowers the NCLT to decide questions of law or fact "arising out of or in relation to" the insolvency resolution, this jurisdiction does not extend to reviewing administrative or quasi-judicial orders passed under independent public law statutes. The NCLAT opined that determining whether a property is "benami" or not requires a trial on the pedigree of the title and the source of funds, which falls exclusively within the domain of the Adjudicating Authority under the Benami Act. Consequently, a challenge to the legality of the attachment order is not a question "arising out of" the insolvency, but one arising dehors the insolvency, and thus falls outside the NCLT's jurisdictional competence.

III. Submissions of the Parties:

14. Submissions on behalf of the appellants: We have heard Mr. Krishnan Venugopal, Mr. Sajan Poovayya, and Mr. Rajiv Shakhder, Ld. Sr. Counsels appearing on behalf of the Appellants. The sum and summation of the submissions put forth can be articulated as:

14.1 Granting precedence to proceedings under the Benami Act over insolvency proceedings would result in removal or freezing of secured assets from the liquidation estate. Such depletion directly undermines the core objective of the IBC, namely maximisation of value of assets and equitable distribution among stakeholders. The insolvency framework cannot function effectively if key assets are carved out through parallel attachment proceedings.

14.2 The IBC constitutes a comprehensive and self-contained "single window" mechanism for insolvency resolution and liquidation. Section 238 embodies a broad non-obstante clause, expressly providing that the IBC shall prevail notwithstanding anything inconsistent contained in any other law. The language employed is of the widest amplitude and is intended to obviate obstruction of the insolvency process by competing statutory regimes.²

14.3 Section 238 of the IBC came into force on 01.12.2016, subsequent to the enforcement of Section 67 of the Benami Act on 01.11.2016. IBC is not only the later enactment but also a specialised and exhaustive legislation governing insolvency and liquidation. In the event of inconsistency, the later and more comprehensive insolvency code must prevail to ensure uniformity and certainty in the insolvency regime.³

14.4 Upon commencement of the CIRP, Section 14(1)(a) 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 such measures would defeat the protective shield intended to preserve the debtor's estate as a going concern.

14.5 Section 32A of the IBC is pressed into service to demonstrate the legislative intent to insulate the corporate debtor and its property from past liabilities upon successful resolution or liquidation sale. Section 32A(2) 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.

14.6 The IBC prescribes strict and time-bound completion of the CIRP within 330 days. Proceedings under the Benami Act, along with the appellate remedies thereunder, operate on significantly longer

timelines. Allowing attachment proceedings to run parallel to insolvency would stall the CIRP, frustrate resolution, and prevent attainment of the stage contemplated under Section 32A, namely approval of a resolution plan or consummation of liquidation sale. The statutory balance preserves accountability of wrongdoers under Sections 3 and 53 of the Benami Act, while ensuring that the insolvency process itself is not derailed.

14.7 Revenue stands in the position of an operational creditor and is bound by the waterfall mechanism under Section 53 of the IBC.

14.8 On facts, it is contended that the alleged "taint" arising from shareholders' funds utilised for share acquisitions in 2016 cannot be imputed to immovable properties of the corporate debtor that were lawfully acquired between 1995 and 2013. The company is a distinct juristic entity and its property cannot be treated as that of its shareholders.⁴

14.9 Section 60(5) vests the NCLT with exclusive jurisdiction over all questions of law or fact arising out of or in relation to the insolvency or liquidation process. The NCLT is therefore the competent forum to examine and, where warranted, set aside attachments that interfere with the orderly conduct of liquidation and distribution of the estate, thereby preserving the primacy and integrity of the IBC framework.⁵

15. Submissions on behalf of the Respondent: Appearing on behalf of respondent/Revenue, we have heard Ld. A.S.G. Mr. S. Dwarakanath opposing the submissions of the appellants. He would submit that;

15.1 The Benami Act is a self-contained code for identification, attachment and confiscation of benami property, with exclusive jurisdiction vested in its authorities. The IBC does not override this regime or empower the NCLT to revisit such findings.

15.2 Sections 24-27, 46, and 49-50 of the Benami Act establish a complete adjudicatory and appellate framework, reinforced by the overriding effect under Section 67. The NCLT's residuary jurisdiction cannot bypass this specialised statutory mechanism.

15.3 Once property is provisionally attached and confirmed under Section 27, it vests in the Central Government, subject to appeal. The NCLT cannot nullify such statutory vesting through insolvency proceedings or indirectly challenge sovereign action under a penal law.

15.4 Under Section 36 of the IBC, only assets 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.

15.5 Section 36(3)(e) further recognises that property "subject to determination by a court or authority" forms part of the estate only to the extent of such determination. Once an authority under Benami Act declares the debtor a benamidar, beneficial ownership stands negated and insolvency cannot convert such property into distributable assets for creditors.

15.6 Confiscation under the Benami Act is a sovereign penal act, not debt recovery. Upon vesting under Section 27, property passes absolutely to the State and falls outside the Section 53 waterfall, which presupposes debtor ownership.

15.7 Section 32A applies only upon approval of a resolution plan or liquidation sale and does not cure defective title or legitimise benami property. Section 14 moratorium protects the debtor's estate from creditor action, not sovereign in rem proceedings under penal statutes

15.8 The Benami Act governs determination and confiscation of benami property, while IBC governs insolvency resolution of assets beneficially owned by the debtor. Where property stands attached and vested under the Benami Act, it lies outside the liquidation estate and outside NCLT jurisdiction.

IV. Analysis and Conclusions:

16. The question that arises for consideration is whether, the legality and validity of an order of attachment under Benami Act can be challenged before the statutory tribunals under IBC. The enquiry should legitimately commence with appreciating the scope and ambit of the Benami Act as well as IBC.

17. Scheme of the Benami Act: Historically, benami transactions constituted a recognised and prevalent mode of holding property in India and were not, per se, unlawful. Such transactions involved

the purchase of property in the name of one person while the consideration was furnished by another, the latter being the real owner. The practice was both recognised as a custom and given legislative recognition through Sections 81 and 82 of the Indian Trusts Act, 1882. However, benami transactions came to be misused for the concealment of ownership, evasion of public revenues, and defeating creditors' claims.

In 1976, the Parliament attempted to address the issue through the introduction of Section 281A of the Income-Tax Act, 1961, which barred the institution of suits in respect of benami properties. Further, the Parliament repealed the aforementioned provisions of the Indian Trusts Act, which had earlier facilitated the enforcement of benami arrangements. To address the issue more comprehensively, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance on 19.05.1988, pursuant to the recommendations of the Law Commission.

The Ordinance barred suits, claims, and defences based on benami ownership. In this background, to replace the said Ordinance and incorporate the recommendations of the Law Commission in its 130th Report, the Benami Transactions (Prohibition) Act, 1988, was enacted. It prohibited the entering into of benami transactions and rendered them an offence, and provided for the acquisition of benami properties without compensation, thereby extinguishing the rights arising from such transactions and preventing undue enrichment through the mere lending of one's name.

17.1 However, in its unamended form, the Benami Act had merely 9 sections. Experience in the administration of the unamended Act revealed significant structural deficiencies in its original framework. Although enacted to prohibit benami holdings and enable acquisition of such property without compensation, the statute lacked critical operational mechanisms, including an express provision for vesting of confiscated property in the Central Government, a structured appellate remedy against orders of attachment or confiscation, conferment of civil court powers upon authorities for effective adjudication, and adequate rulemaking authority.

The absence of these features rendered enforcement of the Act difficult. Comprehensive amendment therefore became necessary to transform the Act from a declaratory prohibition into an effective confiscatory and adjudicatory regime, with a defined procedure for attachment, adjudication, vesting and appeal, thereby strengthening the statutory response to benami transactions.

17.2 The Statement of Objects and Reasons of the Amending Act makes it succinctly clear as to why a sea of changes were brought in, thereby expanding the old Act from 9 Sections to now 70 Sections divided in 8 Chapters. The relevant portion of Statement of Objects is reproduced below for ready reference:

"Statement of Objects and Reasons Amending Act 43 of 2016.-

The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit benami transactions and the right to recover property held benami. The said Act, inter alia, provides that-

- (a) all the properties held benami shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed;
- (b) no amount shall be payable for the acquisition of any property held benami;
- (c) the purchase of property by any person in the name of his wife or unmarried daughter for their benefit would not be benami transaction;
- (d) the securities held by a depository as registered owner under the provisions of the Depositories Act, 1996 or participant as an agent of a depository would not be benami transactions.

2. During the administration of the Benami Transactions (Prohibition) Act, 1988, it was found that the provisions of the aforesaid Act are inadequate to deal with benami transactions as the Act does not-(i) contain any specific provision for vesting of confiscated property with Central Government; (ii) have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a civil court; (iii) confer the powers of the civil court upon the authorities for its implementation; and (iv) provide for adequate enabling rule making powers.

3. In view of the circumstances stated above, comprehensive amendments to the Benami Transactions (Prohibition) Act, 1988 has become necessary in order to prohibit holding property in benami and restrict right to recover or transfer property held benami and also to provide a mechanism and procedure for confiscation of property held benami. It is, therefore, felt necessary to bring

comprehensive amendments to the Benami Transactions (Prohibition) Act, 1988 to deal with benami transactions."

17.3 In its post-amendment avatar, Benami Act, by virtue of Section 2(9) defines a benami transaction. While Section 3 prohibits entering into benami transactions and renders such conduct punishable, Section 4 bars any suit, claim or defence to enforce rights in respect of property held benami. The definition clause further defines 'beneficial owner' under Section 2(12), 'property' under Section 2(26) and 'transfer' under Section 2(29).

17.4 Section 5 declares that property which is the subject matter of a benami transaction is liable to confiscation by the Central Government. The statutory intent is thus to invalidate both the transaction and any derivative civil claims, while exposing the property itself to State action.

17.5 Chapter IV embodies the machinery provisions of the enactment and delineates the course to be followed before property is divested. Section 24 empowers the Initiating Officer, upon forming a reasoned belief that a person is a benamidar, to issue notice and, with the requisite approval, provisionally attach the property so as to prevent its alienation pending inquiry. The matter is then placed before the Adjudicating Authority under Section 26, which, after notice and hearing to the concerned parties, records a finding as to whether the property is benami in nature.

17.6 If such a finding is returned, Section 27 provides for confiscation of the property, and sub-section (3) makes it clear that upon confiscation the property vests absolutely in the Central Government, free from all encumbrances and without compensation. Section 29 enables the Administrator to take possession and deal with the confiscated property in accordance with law. The statutory progression, starting from issuance of notice, to provisional attachment, to adjudication, and finally to confiscation and possession, reflects a structured process in which deprivation of title follows only upon compliance with the prescribed safeguards.

17.7 The Act also establishes a distinct adjudicatory hierarchy and demarcates jurisdictional boundaries. Section 45 bars the jurisdiction of civil courts in respect of matters that the authorities or the Appellate Tribunal are empowered to determine. Section 46 provides for appeals to the Appellate Tribunal against orders of the Adjudicating Authority, with a further appeal to the High Court on questions of law. Section 53 prescribes stringent punishment for benami transactions entered into to defeat law, avoid statutory dues or defraud creditors. While Section 60 clarifies that the provisions of the Act are in addition to, and not in derogation of, any other law, Section 67 confers overriding effect in the event of inconsistency. The legislative scheme thus discloses a complete code.⁶

18. Insolvency and Bankruptcy Code, 2016: Preamble of the IBC states that the objects of the IBC are "to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues."

Hence, the scope and ambit of IBC is to speed up the process providing for insolvency, and achieving maximisation of value of the asset of the entity undergoing CIRP.⁷

18.1 Expounding the core principles of the IBC, this Court in *Swiss Ribbons (P) Ltd. v. Union of India*⁸ noted;

"27. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs.

When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme - workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment.

Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark.

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests."

18.2 The legislative scheme of IBC has also been explained in *Embassy Property Developments (P) Ltd. v. State of Karnataka*⁹ in following manner;

"11. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. As observed by this Court in *Innoventive Industries Ltd. v. ICICI Bank* [it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a timebound manner.

The Code provides a three-tier mechanism, namely, (i) the NCLT, which is the adjudicating authority, (ii) the NCLAT, which is the appellate authority, and (iii) this Court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. Insofar as insolvency resolution of corporate debtors and personal guarantors are concerned, any order passed by the NCLT is appealable to NCLAT under Section 61 of the IBC, 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this Court under Section 62."

18.3 It is, hence, evident that the IBC constitutes a self-contained and exhaustive code governing all facets of insolvency resolution and liquidation of corporate persons. The legislative intent is to ensure that issues relating to the insolvency estate, its preservation, management and distribution are determined within the framework and hierarchy contemplated by the Code.

19. The above analysis demonstrates that both, the Benami Act and the IBC, are special legislations operating within distinct yet potentially intersecting fields. The Benami Act is concerned with identifying and extinguishing benami holdings through a confiscatory mechanism, while the IBC is directed at resolution and liquidation of assets belonging to a corporate debtor within a time-bound framework.

The present controversy arises at the point where property subjected to proceedings under the Benami Act is asserted to form part of the liquidation estate under the IBC. The issue, therefore, is not one of abstract supremacy, but of determining whether the two enactments can be harmoniously construed, and, if not, which statutory regime must prevail in the limited sphere of conflict. It is in this backdrop that the apparent inconsistency between the two statutory regimes requires examination.

20. Two Conflicting Statutory Regime: It has been argued by the appellants that IBC being a special statute must prevail over Benami Act and hence NCLT is competent to adjudicate upon a challenge made to attachment proceedings under Benami Act by virtue of it being a special as well as later law. To this extent, reliance is placed on *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*¹⁰ At the same time, it must be borne in mind that the Benami Act is also a special legislation aimed at prohibiting and penalising benami transactions. What therefore must be seen is the dominant purpose and object of both the enactments.

20.1 In a recent decision, this Court had the occasion to examine the competing application of two special statutes. Analysing the position of law, in *State Bank of India v. Union of India*¹¹ summarised the principles to be followed in case there is a conflict between two statutory regimes. The relevant paragraphs are as under:

"64. When confronted with a situation where two statutory enactments appear to operate in conflict, this Court is enjoined to interpret the concerned legislations in a manner that gives effect to both, to

the extent such reconciliation is reasonably possible. Only where such harmonious construction is not feasible does the Court proceed to determine which enactment must prevail. Conflicts of this nature may arise either between a general statute and a special statute, or between two statutes each possessing a special character. Over time, this Court has evolved settled principles to guide the resolution of such inter se inconsistencies which are as;

(I) Where two enactments are attracted to the same factual matrix, the initial inquiry must be directed towards determining whether either statute is general or special in relation to the subject-matter in issue. This determination is not made in the abstract, but by examining the dominant subject-matter of the statute, viewed through the prism of its legislative intent. An enactment may, depending on the context, operate as a general law for certain purposes and as a special law for others. The optimal outcome is achieved where each statute is allowed to function within its designated sphere, without trenching upon the field occupied by the other.¹² Bearing this in mind, the provisions of both enactments must be scrutinised to assess whether they can be construed in a manner that permits harmonious construction.¹³

(II) Where it is evident that one enactment is intended to function as a special law governing a defined subject, while the other is a general law operating in a broader or overlapping domain, the established principle embodied in the maxim *generalia specialibus non derogant* applies. In such circumstances, the general provision must give way to the special provision.¹⁴

(III) In an eventuality where the contestation is between two special enactments, both having non-obstante clauses, the general rule is that later enactment must prevail over the earlier one.¹⁵

(IV) However, this is not an absolute rule. In the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonise, not excise.¹⁶ Hence, where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons.¹⁷

(emphasis supplied)

20.2 On behalf of the appellants, it was urged that in present case, IBC, being the later and more comprehensive insolvency legislation, must therefore govern in the event of conflict on basis of the principle of *leges posteriores priores contrarias abrogant*. However, the fact that, the property which is sought to be included in the liquidation estate has been provisionally attached for being a benami property, cannot be lost sight of.

20.3 Benami Act is a complete and self-contained code governing identification, provisional attachment, adjudication and confiscation of benami property, supported by a distinct appellate hierarchy. Exclusive jurisdiction over such determinations is conferred upon authorities constituted under the Benami Act. The IBC neither displaces this statutory mechanism nor empowers the NCLT to reopen findings rendered thereunder.

20.4 This Court in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*¹⁸ has held that when proceedings are to be initiated dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. The Court held:

"74. Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of IBC."

(emphasis supplied)

20.5 Further, in *SBI* (supra) resolving the apparent conflict between the IBC regime and regime under telecommunication laws, this Court observed that;

"66. The scope and ambit of IBC is to speed up the process providing for insolvency¹⁹, and achieving maximisation of value of the asset of the entity undergoing CIRP. The focus is on the company. On the other hand, Telegraph Act, Wireless Telegraphy Act and TRAI Act forms a complete and exhaustive code for all matters relating to telecom sector.

67. The statutory regime under IBC cannot be permitted to make inroads into telecom sector and re-write and restructure the rights and liabilities arising out of administration, usage, and transfers of spectrum which operate under exclusive legal regime concerning telecommunications. The disharmony caused by applying IBC to the telecom sector which operates under a different legal regime was never intended by the Parliament.

68. Statutory interpretation adopted by the corporate debtors for applying IBC to the material resource of the nation, the spectrum by referring to it as an asset in its books of account, the License Agreement, Tripartite Agreement, or the Spectrum Trading Guidelines is like the tail wagging the dog. Statutory interpretation cannot be based on a myopic approach of reading the definition clauses out of its context.

Merely because spectrum can be treated as an "asset" on the basis of certain attributes, such as possession and usage, lease and assignment, claim and liability or credit and debt, the entirety of the telecom sector cannot be brought under the sweep of IBC. The two statutes have different subjects to deal with, different purposes to subserve, different laws to abide, protect different rights and create different liabilities. It is necessary for the constitutional courts to recognise their respective provinces and to ensure that they operate with harmony and without conflict."

(emphasis supplied)

20.6 What emerges from the foregoing analysis is that the jurisdiction of authorities under IBC cannot be expansively construed so as to trench upon fields that are founded in public law domain. Where the subject matter of the dispute pertains to the exercise of sovereign statutory power, particularly in relation to determination of legality of title, attachment, or confiscation and vesting thereof, the adjudicatory fora under the IBC must necessarily yield to the specialised mechanism created by such statute. Proceedings under Benami Act squarely fall within the public law domain. They are not in the nature of inter se disputes between private parties concerning proprietary rights, nor are they recovery proceedings capable of being subsumed within insolvency resolution.

The Benami Act represents a sovereign exercise aimed at identifying and extinguishing benami transactions. The attachment and eventual confiscation of property thereunder operate in rem and culminate in vesting of the property in the Central Government free from encumbrances. Such consequences are penal and deterrent, rooted in statutory illegality, and are enforced through a distinct adjudicatory hierarchy whose jurisdiction is expressly insulated from ordinary civil fora. In similar circumstances when proceedings under MMDR Act were sought to be interdicted by invoking IBC, this Court in Embassy Property (supra) rejected the argument and held as under;

"29. Therefore as rightly contended by the learned Attorney General, the decision of the Government of Karnataka to refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. The NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court having the power of judicial review over administrative action.

37. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in clause (c) of sub-section (5).

40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18.

This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Sections 25(1) and 25(2)(b) reads as follows:

"25. Duties of resolution professional.-

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:

(a) ***

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings;"

(emphasis supplied)

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

41. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

(emphasis supplied)

20.7 In view of the above discussion, permitting the NCLT to examine the correctness of attachment or adjudication under the Benami Act by invoking Section 60(5) of the IBC would amount to elevating it to the status of a judicial review forum over sovereign action, a course expressly disapproved in the line of authority commencing from Embassy Property (supra) and consistently reiterated thereafter. The IBC, concerned as it is with insolvency resolution and value maximisation of lawfully owned assets, cannot be employed as a mechanism to dilute or override statutory proceedings undertaken in the public law sphere for confiscation of tainted property.

20.8 The properties in question, having been provisionally attached and confirmed by the Adjudicating Authority under the Benami Act, stand vested in the Central Government under Section 27, subject to statutory appeal. Those determinations remain operative. The NCLT cannot, in exercise of insolvency jurisdiction, disregard or nullify a statutory vesting effected under another enactment. The IBC does not provide an indirect route to challenge sovereign acts validly undertaken under a penal statute.

21. A more fundamental objection is raised with reference to Section 36 of the IBC. The liquidation estate comprises only assets beneficially owned by the corporate debtor. Property held benami is, by definition, held in a fiduciary or representative capacity for the real owner. Section 36(4)(a)(i) excludes assets held in trust for third parties from the liquidation estate. In Controller of Estate Duty, Lucknow v. Alok Mitra²⁰ this Court reiterated that a benamidar possesses no beneficial interest and that title vests in the person who provided consideration. Where the corporate debtor is merely an ostensible holder, the property never forms part of its estate and cannot be administered in liquidation.

22. Section 36(3)(e) further recognises that property "subject to determination by a court or authority" forms part of the estate only to the extent of such determination. Once the Adjudicating Authority under the Benami Act has concluded that the corporate debtor is a benamidar, beneficial ownership stands negated. The legality and validity of such determinations are subject matter of appeal under the provisions of Benami Act alone. Insolvency proceedings cannot be utilised to convert property held for another into distributable assets for creditors. The IBC contemplates distribution of the debtor's estate, not assets impressed with a trust or held on behalf of a third party.

23. The reliance placed on Section 32A and the moratorium under Section 14 is answered on statutory grounds. Section 32A is event-based and triggered only upon approval of a resolution plan or completion of a liquidation sale to an unconnected third party. Absent such approval, the immunity does not arise. The provision does not validate defective title nor retrospectively convert benami property into assets of the corporate debtor.

24. Likewise, the moratorium under Section 14 is intended to preserve the debtor's estate for orderly resolution; it does not interdict sovereign proceedings in rem for attachment or confiscation under penal statutes. Such proceedings are distinct from creditor enforcement and proceed on an independent statutory footing. The contention of the appellants that the attachment order is impermissible as the moratorium under Section 14 of the Act commenced on 15.10.2018 is not acceptable because the mandate of moratorium must be understood in the context of the applicability of the Act. The moratorium is intended to protect the corporate debtor from "creditor actions" aimed at debt recovery, not to shield "tainted assets" from sovereign actions against crime. In any event of the matter, the liquidator would have power and jurisdiction to deal with the property only when the corporate debtor has a beneficial interest in the said property.

25. Mr. Dwarakanath, also brought to our notice certain questionable transactions including statement of witnesses that were recorded. We are not inclined to examine the facts of the case in detail in order to ensure that the appellants' remedies are not prejudiced in any way.

26. Returning to the facts of the case, we are of the opinion that the appellants could not have challenged the attachment order passed under the Benami Act before the statutory authorities under the IBC. We have no doubt in our mind that such invocation is not bonafide and is actually intended to circumvent and interdict the procedures contemplated under the Benami Act.

Further, filing of appeal before NCLAT, despite the finding that the appropriate forum is not NCLT, but the statutory authorities under the Benami Act, leaves no doubt that it is a complete abuse of the process. The appellants have taken the precious time of the NCLT, NCLAT and also of this Court when the position of law is amply clear and there was no doubt whatsoever about the availability of the statutory remedies under the Benami Act.

27. Under these circumstances, the appeals have to be dismissed with exemplary costs.

28. For the reasons stated above, all the appeals are dismissed with costs quantified at Rs. 5 lakhs each. The amount shall be deposited with the Supreme Court Advocates on Record Association (SCAORA) within four weeks from the date of passing of this judgment.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Atul S. Chandurkar]

New Delhi;

February 24, 2026

1 2022 SCC OnLine NCLAT 2.

2 Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407

3 Solidaire India Ltd. v. Fairgrowth Financial Services Ltd, (2001) 3 SCC 71.

4 Bacha F. Guzdar v. Commissioner of Income Tax, Bombay (1954) 2 SCC 563

5 Indian Overseas Bank v. RCM Infrastructure Ltd (2022) 8 SCC 516

6 Kailash Assudani v. Commissioner of Income Tax, 2017 SCC OnLine MP 2384;

7 Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1 SCC 407.

8 (2019) 4 SCC 17.

9 (2020) 13 SCC 308

10 (2001) 3 SCC 71.

11 2026 INSC 153. (Hereinafter, SBI)

12 LIC of India v. DJ Bahadur, (1981) 1 SCC 315. Relevant paragraph is as follows:

"52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes - so too in life.

57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution."

13 Gobind Sugar Mills Ltd. v. State of Bihar, (1999) 7 SCC 76. Relevant paragraph is as follows:

"10. While determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act."

14 State of Gujarat v. Patel Ramjibhai Danabhai, (1979) 3 SCC 347; Commercial Tax Officer, Rajasthan v. Binani Cements Ltd., (2014) 8 SCC 319; Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal, (2022) 6 SCC 496

15 Sarwan Singh v. Shri Kasturi Lal, (1977) 1 SCC 750. Relevant portion of the judgment is as follows:

"20. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration.

21. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one."

16 S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors. (2021) 15 SCC 730. Relevant portion of the judgment is as follows:

"34. Principles of statutory interpretation dictate that in the event of two special acts containing non obstante clauses, the later law shall typically prevail. In the present case, as we have seen, the Senior Citizen's Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonise, not excise."

17 Bank of India v. Ketan Parekh, (2008) 8 SCC 148. Relevant portion of the judgment is as follows:

"28. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons."

18 (2021) 7 SCC 209

19 Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1 SCC 407.

20 (1981) 2 SCC 121

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.