



Insolvency Jurisdiction and Sovereign Confiscation: Reconciling the IBC with the Benami Law in S. Rajendran v. The Deputy Commissioner of Income Tax (Benami Prohibition) & Others bearing Civil Appeal No.7140 of 2022 decided on 24.02.2026

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Introduction

In S. Rajendran v. Deputy Commissioner of Income Tax (Benami Prohibition) & Others¹, the Hon'ble Supreme Court addressed an important jurisdictional conflict between the Insolvency and Bankruptcy Code, 2016 (IBC) and the Prohibition of Benami Property Transactions Act, 1988 (Benami Act). The Hon'ble Court held that attachment and confiscation proceedings under the Benami Act cannot be challenged before the NCLT/NCLAT under the IBC. The ruling clarifies the limits of insolvency jurisdiction, reinforces the autonomy of sovereign confiscatory regimes and advances a doctrine of statutory harmonisation between competing special enactments. This decision contributes significantly to the developing jurisprudence on the interface between insolvency law and public law enforcement statutes.

The expansion of the IBC as a comprehensive insolvency framework has generated recurring conflicts with other regulatory and penal statutes. In S. Rajendran, the Hon'ble Court confronted the question:

Can the legality of a provisional attachment order passed under the Benami Act be challenged before insolvency tribunals by invoking Section 60(5) of the IBC?

Answering in the negative, the Court delineated the boundaries between insolvency adjudication and sovereign confiscatory action.

Facts

The dispute arose from proceedings against corporate debtors whose assets were provisionally attached under Section 24 of the Benami Act on the allegation that their shareholding transfers were funded through demonetised currency and constituted benami transactions. During the pendency of corporate insolvency resolution proceedings (CIRP) and later liquidation, the liquidators sought to stay the attachment.

The Liquidators contended that the attached properties formed part of the liquidation estate. The NCLT declined jurisdiction. The NCLAT affirmed, holding that remedies lay exclusively under the Benami Act. The Hon'ble Supreme Court upheld these concurrent findings and dismissed the appeals with costs.

The Legal Framework in Conflict

The Court's analysis centred on the apparent conflict between the statutory architecture of the IBC and the Benami Act. On the insolvency side, the Appellants relied upon Section 14 (moratorium), Section 32A (immunity upon approval of resolution plan or completion of liquidation sale), Section 36 (definition of the liquidation estate), Section 60(5) (residuary jurisdiction of the NCLT), and the overriding clause in Section 238. These provisions were invoked

¹ 2026 INSC 187



to argue that once CIRP or liquidation commences, all assets of the corporate debtor must be preserved and adjudicated within the IBC framework.

In contrast, the Benami Act provides an independent and self-contained enforcement mechanism. Section 24 authorises provisional attachment, Section 26 provides for adjudication, Section 27 mandates confiscation and absolute vesting of benami property in the Central Government and Section 67 gives the Act overriding effect. It also establishes a distinct appellate hierarchy culminating in the High Court.

The core issue before the Hon'ble Court, therefore, was whether the insolvency regime designed for resolution and distribution of lawfully owned assets could displace or review sovereign confiscatory proceedings undertaken under a penal statute operating in the public law domain.

The Court's Observations

1. The Benami Act as a Self-Contained Confiscatory Code

The Hon'ble Court emphasised that the Benami Act, particularly after its comprehensive 2016 amendments, constitutes a self-contained confiscatory regime equipped with a complete statutory machinery for identification, provisional attachment, adjudication, and eventual confiscation of benami property. The Act establishes a specialised adjudicatory structure, including an Adjudicating Authority, an Appellate Tribunal, and further Appeal to the High Court, thereby creating a structured appellate hierarchy independent of ordinary civil forums. It expressly bars the jurisdiction of civil courts and through Section 67, accords overriding effect to its provisions in the event of inconsistency with other laws. Crucially, once confiscation is ordered under Section 27, the property vests absolutely in the Central Government, free from all encumbrances and without compensation. On this basis, the Court characterised proceedings under the Benami Act as sovereign, *in rem* actions operating in the public law domain, fundamentally distinct from private law disputes concerning creditor recovery or asset distribution under insolvency proceedings.

2. IBC as a Comprehensive Insolvency Code Within Defined Jurisdictional Limits

The Hon'ble Court reiterated that the Insolvency and Bankruptcy Code, 2016 is a comprehensive and self-contained framework governing insolvency resolution and liquidation of corporate persons. Its primary objectives are the maximisation of asset value, preservation of the corporate debtor as a going concern, and the completion of restructuring or liquidation within a strict time-bound structure. The Code is fundamentally concerned with assets that are beneficially owned by the corporate debtor and form part of the insolvency or liquidation estate. However, the Court clarified that the IBC is not a charter for reviewing or invalidating sovereign administrative or quasi-judicial action undertaken under independent public law statutes. The residuary jurisdiction conferred upon the NCLT under Section 60(5) cannot be expansively interpreted so as to convert insolvency tribunals into forums exercising judicial review over orders passed under specialised penal or regulatory enactments. Insolvency jurisdiction, therefore, operates within clearly defined boundaries and cannot encroach upon domains reserved for sovereign statutory authorities.

3. Harmonisation of Competing Special Statutes

While addressing the apparent conflict between the IBC and the Benami Act, the Appellants contended that the IBC, being a later enactment, must prevail, particularly in light of the overriding effect conferred by Section 238 and the Code's objective of maximising the value of the corporate debtor's assets. The Appellants argued that assets subjected to attachment ought to be included within the liquidation estate to ensure effective insolvency resolution. The Hon'ble



Court, however, declined to apply the “later law prevails” principle in a mechanical or hierarchical manner. Instead, it adopted a doctrine of harmonious construction, recognising that both the IBC and the Benami Act are special statutes operating within distinct spheres. The Hon’ble Court further observed that where two special enactments intersect, Courts must examine their dominant purpose and legislative intent rather than resorting to automatic statutory supremacy. The Hon’ble Court emphasised that harmonisation is preferable to exclusion and that insolvency law cannot be invoked to override sovereign penal confiscation undertaken under a distinct public law regime.

4. Why the IBC did not Prevail

- *Section 60(5): Residuary Jurisdiction Within Defined Limits*

Section 60(5) of the IBC confers jurisdiction upon the NCLT to decide questions of law or fact “arising out of or in relation to” the insolvency resolution or liquidation process. The Appellants relied upon this provision to argue that since the attachment affected the liquidation estate, the NCLT was competent to examine its legality. The Hon’ble Court rejected the argument of Appellant and observed that determining whether property constitutes benami property requires an independent adjudication involving examination of the source of funds, the true ownership and the pedigree of title. Such determinations fall squarely within the exclusive statutory framework established under the Benami Act. Consequently, the dispute did not arise out of the insolvency process but existed independently of it. The Hon’ble Court observed that Section 60(5) cannot be invoked to convert the NCLT into a forum for reviewing sovereign determinations rendered under specialised public law statutes.

- *Section 36: Liquidation Estate Confined to Beneficial Ownership*

The Hon’ble Court observed that the Code makes it clear that only assets beneficially owned by the corporate debtor form part of the estate available for distribution. The Court further observed that the property held benami, by its very nature, is held in a fiduciary or representative capacity for the real owner and does not confer beneficial ownership upon the ostensible holder. Section 36(4)(a)(i) expressly excludes assets held in trust for third parties from the liquidation estate and once the Benami authorities determine that the corporate debtor is merely a benamidar, beneficial ownership stands negated, and the property cannot be treated as part of the insolvency estate.

- *Section 14 Moratorium: Distinguishing Private Recovery from Sovereign Confiscation*

The Hon’ble Court further clarified the scope of the moratorium under Section 14 of the IBC. The Court observed that the moratorium is intended to preserve the corporate debtor’s estate from depletion through creditor enforcement actions during CIRP and operates as a shield against suits, proceedings, or recovery measures aimed at debt enforcement. However, attachment proceedings under the Benami Act are not creditor-driven recovery mechanisms but sovereign actions undertaken in the public interest to confiscate tainted property. Such proceedings are penal and operate in rem. The moratorium, therefore, does not extend to restraining sovereign confiscatory powers exercised under a separate statutory regime. This distinction between private law enforcement and public law confiscation formed a central pillar of the Court’s reasoning.

- *Section 32A: Conditional and Event-Based Immunity*

The Appellants also relied upon Section 32A of the IBC, which provides immunity to the corporate debtor and its property upon approval of a resolution plan or completion of a liquidation sale to an unconnected third party. The Hon’ble Court held that the protection under Section 32A is conditional and event-based. It becomes operative only upon the occurrence of specified statutory milestones. Pertinently, Section 32A does not validate defective title or retrospectively convert property held benami into legitimate assets of the corporate debtor. It cannot be invoked to defeat ongoing sovereign confiscation proceedings or to bring tainted property within the liquidation estate. The provision protects bona fide resolution outcomes, but it does not operate as a cleansing mechanism for property found to be unlawfully held.



5. Normative and Structural Implications

- *Reinforcing Public Law Autonomy*

The judgment decisively reinforces the autonomy of public law enforcement regimes in the face of expanding insolvency jurisdiction. The Hon'ble Court affirmed that economic restructuring mechanisms cannot override sovereign penal statutes by holding that insolvency proceedings cannot be deployed to obstruct or dilute confiscatory action under the Benami Act. The approach preserves the integrity of anti-corruption and anti-evasion frameworks, ensuring that statutory mechanisms designed to identify and extinguish tainted property remain effective and insulated from collateral challenges within insolvency proceedings. In doing so, the Hon'ble Court safeguarded not merely procedural boundaries but the larger public interest in revenue protection and deterrence of unlawful financial practices.

- *Consolidating the Embassy Property Doctrine*

The ruling consolidates and extends the principles laid down in Embassy Property Developments (P) Limited vs State of Karnataka² and subsequent telecom spectrum jurisprudence. The Hon'ble reiterated that the NCLT, as a creature of statute, does not possess constitutional or plenary judicial review powers. Insolvency tribunals cannot assume authority over decisions taken by governmental or statutory authorities in the public law domain. This clarification ensures that the boundaries between specialised tribunals and constitutional courts remain intact. The decision thus reinforces the structural demarcation between insolvency adjudication and sovereign regulatory action, preventing jurisdictional overreach by insolvency fora.

- *Delineating Insolvency Estate Boundaries and Curtailing Forum Shopping*

The Hon'ble Supreme Court's decision serves a dual structural function. Firstly, it clarifies the doctrinal limits of the insolvency estate while simultaneously reinforcing procedural discipline against strategic forum shopping. By anchoring its reasoning in Section 36 of the IBC, the Hon'ble Court drew a principled distinction between legal title and beneficial ownership, holding that only assets beneficially owned by the corporate debtor can form part of the liquidation estate. The property held in a fiduciary or representative capacity, including benami property, stands excluded from distribution. This interpretation confines the asset maximisation objective to lawful proprietary interests and prevents insolvency proceedings from becoming a conduit for administering assets tainted by illegality. Secondly, the Hon'ble Court's characterisation of the Appeal as an abuse of process signals strong judicial disapproval of attempts to bypass specialised statutory appellate mechanisms under penal laws by invoking the residuary jurisdiction of insolvency tribunals. By insisting that challenges to sovereign confiscatory action must be pursued within the statutory framework specifically designed for that purpose, the Court fortified institutional boundaries, strengthened procedural discipline, and curtailed the risk of fragmented adjudication through tactical insolvency litigation.

Conclusion

In *S. Rajendran*, the Hon'ble Court clarified that attachment and confiscation proceedings under the Benami Act cannot be challenged before the NCLT or NCLAT and that insolvency jurisdiction does not extend to reviewing sovereign confiscatory action undertaken in the public law domain. The Court held that property declared benami does not form part of the liquidation estate, as the IBC recognises only assets beneficially owned by the corporate debtor, and further affirmed that neither the moratorium under Section 14 nor the conditional immunity under Section 32A can override statutory attachment under a penal regime. By preferring harmonisation over mechanical

² (2020) 13 SCC 308



statutory supremacy, the Hon'ble Court reconciled the IBC with the Benami Act in a manner that preserves the integrity of both enactments. The judgment represents an important doctrinal consolidation in Indian insolvency jurisprudence, delineating the constitutional boundary between economic resolution mechanisms and sovereign enforcement powers, and ensuring that insolvency proceedings are not used as instruments to legitimise or distribute tainted assets. As regulatory and penal statutes increasingly intersect with corporate insolvency, *S. Rajendran* is poised to serve as a foundational authority on jurisdictional discipline and principled statutory coexistence.