

W.P(MD)No.30435 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.11.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.30435 of 2025

and

W.M.P.(MD)Nos.23661, 23662 and 23664 of 2025

M/s.Milan Textile Enterprises Pvt. Ltd.,
(CIN.U51311TN2005PTCO58472),
Represented by its Director,
Devaraj Rajmohan.

... Petitioner

Vs.

1.The Initiating Officer,
Deputy Commissioner of Income Tax (Benami Prohibition),
Room No. 104,
Income Tax Investigation Wing Building,
1st Floor, 46, Mahatma Gandhi Road,
Nungambakka, Chennai - 600 034,
Tamil Nadu.

2.The Sub Registrar,
Office of the Sub-Registrar,
Thallakulam,
Integrated Complex of Registration Department,
TNAU Nagar, Rajakampeeram,
Y.Othakadai, Madurai-625104,
Tamil Nadu.

... Respondents

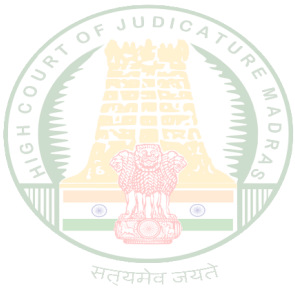


W.P(MD)No.30435 of 2025

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings initiated by the 1st Respondent against the Petitioner Company under the Prohibition of Benami Property Transactions Act, 1988, in respect of the property known as 'Milanem Mall' vide its Provisional Attachment Order DIN.ITBA/COM/F/17/2019-20/1019654326 (1) dated 01/11/2019 and the Order continuing attachment No.43/DCIT(BP)/2019-20 dated 28/01/2020 and quash the same as being illegal, without jurisdiction, and barred by the provisions of Section 32A of the Insolvency and Bankruptcy Code, 2016 insofar as the proceedings initiated by the Respondent against the Petitioner Company and its property at 21,683 Sq.ft., of land situated at 80 feet road, Anna Salai, K.K. Nagar, Madurai comprised in T.S.No.80, 81, 82, 83, 84 and 85 of Managiri Bit-I village, K.K.Nagar, Madurai North Taluk, and the mall constructed thereon (MILANEM Mall) including the buildings, installations, machinery, equipment etc., with built up area of 90,200 Sq. Ft (One Basement floor. Ground Floor plus 5 floors).

For Petitioner : Mr.Sricharan Rangarajan,
For Mr.S.Ramsundar Vijayraj.

For Respondents : Mr.M.Sheela,
Senior Standing Counsel for R1.
Mr.M.Lingadurai,
Spl. Government Pleader for R2.



W.P(MD)No.30435 of 2025

ORDER

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Milan Textile Enterprises Private Limited purchased the petition-mentioned property vide sale deed dated 26.08.2004 (Document No. 2378/2004) registered on the file of Sub Registrar, Thallakulam. The Deputy Commissioner of Income Tax (Benami Prohibition), Chennai formed the opinion that this property is being held benami by the petitioner herein. Hence, provisional attachment order under Section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as “the Act”) was issued on 01.11.2019 restraining the petitioner from transferring or charging the said property. Vide order dated 28.01.2020, it was directed that the attachment would continue until further order was passed by the adjudicating authority. These two orders are assailed in this writ petition.

2.City Union Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 on 18.03.2021 to initiate corporate insolvency resolution process against the petitioner - company. The application was admitted on 21.03.2022 and CIRP was ordered to be initiated. Moratorium envisaged under Section 14(1) of IBC also came



W.P(MD)No.30435 of 2025

into force. An Insolvency Resolution Professional was also appointed to take over the management. On 05.01.2024, the resolution plan was submitted by the Resolution Professional and the same was also duly approved by NCLT. As a result, the successful Resolution Applicant replaced the erstwhile management.

3.In the meanwhile, on 23.09.2021, the adjudicating authority under the Prohibition of Benami Property Transactions Act, 1988 confirmed the attachment. Questioning the same, the erstwhile management had filed an appeal before the Appellate Tribunal. The appeal is still pending. Since the new management had taken over the petitioner - company, they also moved an application before the Appellate Tribunal for release of the petition-mentioned property. That application was dismissed on the ground that grant of interim relief would amount to granting final relief. It is in this background, the present challenge has been mounted.

4.The prime contention advanced by the learned Senior Counsel for the petitioner is that when once the insolvency resolution plan had



W.P(MD)No.30435 of 2025

been approved by the NCLT and a new management has taken over, no action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP, where such property is covered under the Resolution Plan which results in the change in control of the corporate debtor. In other words, the new management should be allowed to commence its journey with a clean slate. Reliance was placed on Sections 32A and 238 of IBC, 2016. He drew my attention to the decisions rendered in *Manish Kumar v. UOI* (2021) 5 SCC 1, *Mudapallur Varieth Gangadharan, RP of Padmaadevi Sugards Ltd v. Dy.Commissioner of IT (Benami Prohibition)* (MA/05/2020 by NCLT, Chennai dated 25.04.2022, *Shiv Charan v. Adjudicating Authority* (2024:BHC-OS:3371-DB) and *Committee of Creditors v. Directorate of Enforcement* (SLP (C) No.29327-29328 of 2019).

5.Per contra, the learned Senior Standing Counsel for the Initiating Officer for Income Tax Department relying on Sections 54, 57 and 67 of the Benami Act submitted that there is no merit in the contention advanced by the learned Senior Counsel for the petitioner. She would

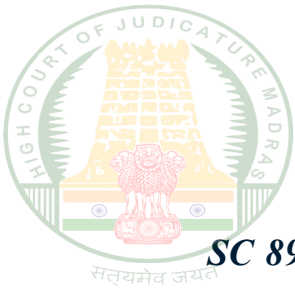


W.P(MD)No.30435 of 2025

add that when an appeal is pending before the Tribunal, the petitioner cannot be allowed to mount a parallel challenge to the attachment proceedings. According to her, Section 32A of the Code would kick in only in respect of the properties of the corporate debtor. When the very character of the property itself is tainted and the materials on record indicate that the petitioner is only a benamidar and a third person is the beneficial owner, Section 32A of the Code has no application. She relied on the decision rendered in *M/s.Embassy Property Developments Pvt. Ltd., vs. State of Karnataka (Civil Appeal No.9170 of 2019 dated 03.12.2019)*. She pressed for dismissal of the writ petition.

6.Both sides have filed their written submissions and the learned counsel on either took me through them.

7.I carefully considered the rival contentions and went through the materials on record. The maintainability of this writ petition can first be decided. It is true that questioning the attachment order, appeal is pending before the Appellate Tribunal (PBPT). The endeavor of the petitioner herein to obtain release of the property at the interim stage did not fructify. The Hon'ble Supreme Court in *Jai Singh v. UOI (AIR 1977*



W.P(MD)No.30435 of 2025

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SC 898) held that two parallel remedies in respect of the same matter at the same time cannot be pursued. The Hon'ble Supreme Court in ***S.J.S.Business Enterprises Pvt Ltd v. State of Bihar (2004) 7 SCC 166***, however took a benevolent approach. It suggested that instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226. Such an approach was adopted when the petitioner had already filed a civil suit. The Hon'ble Supreme Court did not fault the petitioner because before the final disposal of the writ petition, the suit had been withdrawn though it was pending when interim relief was obtained. Coming to the case on hand, it is seen that the appeal before the tribunal was filed by the erstwhile management. Though the very same entity is before me, its composition has undergone a fundamental change. As a result of the approval of the resolution plan, a new management has taken over. They seek the benefit under Section 32A of the Code. This issue cannot be decided by the Appellate Tribunal. The said Tribunal having been established under Section 30 of the Benami Act cannot travel beyond its four corners. The present management may not be in a



W.P(MD)No.30435 of 2025

position to even withdraw the appeal since it was filed by the erstwhile management. This writ petition cannot therefore be termed as not maintainable on the ground that there is pursuit of parallel remedies by the same party on the same cause of action.

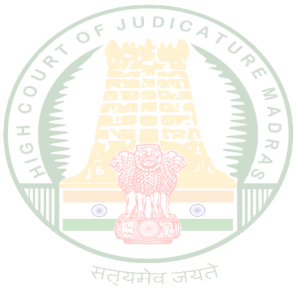
8. Section 32A of IBC, 2016 reads as follows:-

“32A. Liability for prior offences, etc.—(1)

Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:



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W.P(MD)No.30435 of 2025

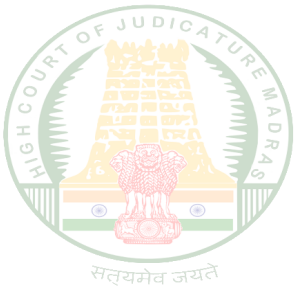
(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the



WEB COPY



W.P(MD)No.30435 of 2025

corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.”

Section 32A(1) of the Code opens with a non-obstante clause. However, sub-section 2 of Section 32A does not have a similar clause. But Section 238 of the Code states that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force. A non-obstante clause is a legislative device used by the Parliament or a legislature to give an overriding effect to what has been specified in the enacting part of a Section in case of a conflict with what is contained in the non-obstante clause. Its effect is that in spite of the inconsistent provisions in any other statute, the provision or the statute covered by the non-obstante clause will have its full operation and no provision contained elsewhere would be an impediment (vide ***Mohammed Abdul Samad v. State of Telengana (2024 INSC 506)***). Just as IBC has a overriding Section, PBPT Act, 1988 also has a overriding provision in Section 67. When two arrows endowed with equal power meet in the mid air, they may cancel each other out. Not so in the case of



W.P(MD)No.30435 of 2025

the overriding provisions. The subsequently enacted provision will

prevail. In *Solidaire India Ltd v. Fairgrowth Financial Services Ltd*

(2001) 3 SCC 71, it was held as follows :

“Where there are two special statutes which contain non-obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.”

Applying the *Solidaire India* principles, there cannot be any doubt that by virtue of Section 238 of the Code, the provisions of IBC, 2016 will prevail over PBPT Act, 1988. The *Solidaire India* principles were reiterated in *Kotak Mahindra Bank Limited Vs. Girnar Corrugators Pvt. Ltd. and Ors* (2023) 3 SCC 210.

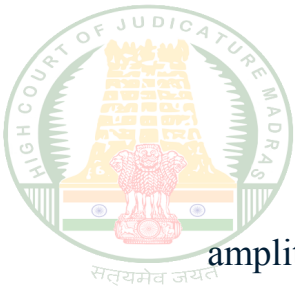
9. So long as the two statutes operate in different spheres, there is no question of conflict arising between them. But in the case on hand, a direct conflict has arisen. The Resolution Plan approved by NCLT



W.P(MD)No.30435 of 2025

included the property that had been attached by the adjudicating authority under the PBPT Act. The successful resolution-applicant contends that when once the NCLT had blessed the resolution plan, it comes into effect and all the past sins associated with the corporate debtor stood purged. The successful resolution applicant commences his journey on a clean slate. I now have to test whether this proposition is correct.

10.The answer is found in the language of Section 32A(2) of IBC, 2016. It states that no action shall be taken against the property of the corporate debtor. The expression “property” is not qualified by any adjective. When there is no limiting expression, the word in question must be given its fullest import. “Property of the corporate debtor” would include all the properties standing in the name of the corporate debtor”. The word “property” in Section 3(27) of the Code as including money, goods, actionable claims, land and every description of property and every description of interest including present or future or vested or contingent interest arising out of, or incidental to property. The property can be situated in India or outside. The description is thus of the widest



W.P(MD)No.30435 of 2025

amplitude. The expression “of” has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon as “belonging to”. According to Corpus Juris Secundum, it is also defined as “pertaining to, connected with or associated with” [(1988) 5 SCC 48, para 10]. Thus, the expression “property of the corporate debtor” found in Section 32A(2) would mean any property of the corporate debtor, whatever be its character.

11.An order of attachment is also an action against the property as per the Explanation to the said provision. The constitutional validity of Section 32A of the Code was upheld in ***Manish Kumar v. UOI (2021) 5 SCC 1***. Section 32A(2) r/w.Section 238 of the Code would stand as an impregnable shield against any action that may be taken against the property of the corporate debtor. In fact, it preempts taking of any such action.

12.The petitioner herein fulfils all the parameters set out in Section 32A(2) of the Code. The attached property is covered under the Resolution Plan. It was also duly approved by the NCLT which is the adjudicating authority under Section 31 of the Code. Benami transaction

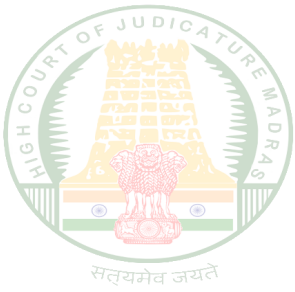


W.P(MD)No.30435 of 2025

has been prohibited under Section 3 of PBPT Act, 1988. It is an offence punishable under Section 53 of the PBPT Act, 1988. According to the Income Tax Department, Milan Textile Enterprises Pvt Ltd purchased the property in its name but the beneficial owner is one V.K.Sasikala. But Section 32A specifically restrains taking of action against the property of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP. In this case, CIRP commenced only on 18.03.2021. The offence was committed much earlier. Therefore, Section 32A(2) of the Code will squarely come into play.

13.If the contention of the Department is accepted, it would mean that properties held benami would fall outside the scope of Section 32A(2) of the Code. When IBC, 2016 does not exclude such a category of property, it would not be open to the court to restrictively construe the expression “property” found in Section 32A(2).

14.Two other submissions raised by the learned Senior Standing Counsel for the Initiating Officer will have to be dealt with. My attention was drawn to Section 57 of the Act which reads as follows:-

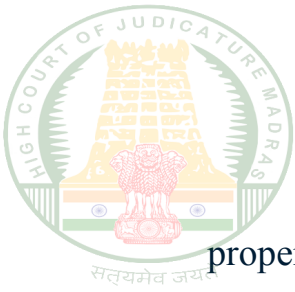


W.P(MD)No.30435 of 2025

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“57 Certain transfers to be null and void.—Notwithstanding anything contained in the Transfer of the Property Act, 1882 (4 of 1882) or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.”

According to the learned Standing Counsel since the attachment order had been already made, any subsequent transaction cannot nullify the attachment and will have to be treated as void. But this contention overlooks the very nature of the subsequent transaction. Section 57 of PBPT Act, 1988 prohibits transfer by any mode. The expression “transfer” has been defined in Section 2(99) of the PBPT Act, 1988 as including sale, purchase or any other form of transfer of right, title, possession or lien. The property that is said to be held benami continues to be in the name of the original purchaser ie., Milan Textile Enterprises Pvt Ltd., It has not changed hands. There has been no sale of the



W.P(MD)No.30435 of 2025

property. The composition of management of the purchaser-company alone has changed and that too under the aegis of the NCLT. The change in management has been through a statutorily approved process. Thus, there has been no transfer of the property within the meaning of Section 2(29) of PBPT Act, 1988. Hence, Section 57 has no application.

15. There is yet another perspective. The PBPT Act was enacted to prohibit benami transactions. It provides for confiscation of the properties held benami by the Central Government. Though Section 3 of the Act prohibits benami transactions, Section 4 of the Act states that no suit, claim or action to recover a property held benami is maintainable. In other words, the beneficial owner or the person claiming to be the real owner of the property cannot maintain a suit for recovery of the property. It is like a coin dropped in a temple hundiya. Once dropped, no recovery. Likewise, a defence that the property is being held benami is also not allowed. This is sufficient indication that statute does recognize that the benamidar is the holder of the property. The benamidar is entitled to hold the property even against the beneficial or real owner but subject to an overriding consideration i.e., the Central Government can confiscate the

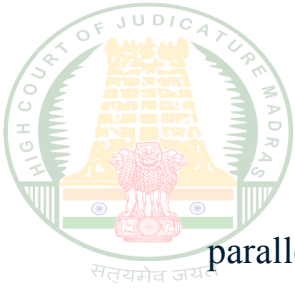


W.P(MD)No.30435 of 2025

same. Till the Central Government confiscates the same, the property is very much the property of the benamidar.

16.IBC came into force only in the year 2016. The Prohibition of Benami Property Transactions Act was enacted way back in the year 1988. Thus, when the parliament enacted IBC 2016, it was conscious that benami transactions stood prohibited. If the parliament intended that benami properties should not be saved, they would have definitely introduced some limiting expression or qualifying word in Section 32A. No such expression is found in Section 32A of the Code. When Section 32A talks about the property of the corporate debtor, it includes and encompasses all the properties of the corporate debtor whatever be their character.

17.Even though the petitioner assails the validity of the impugned attachment orders, it is not open to me to quash the same. They have been validly passed. It is declared that by virtue of the impugned attachment proceedings, no action can be taken against the subject properties. Viewed in this manner, the petitioner cannot be accused of pursuing



W.P(MD)No.30435 of 2025

parallel remedies. The Resolution Plan approved by NCLT will act as an impregnable fire wall.

18.This writ petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petitions are closed.

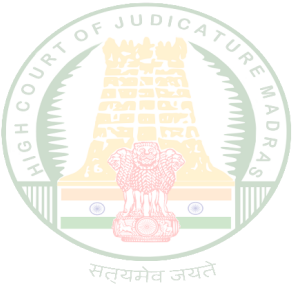
27.11.2025

NCC : Yes/No
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Internet : Yes/ No
SKM

To:-

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Deputy Commissioner of Income Tax (Benami Prohibition),
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W.P(MD)No.30435 of 2025

G.R.SWAMINATHAN, J.

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W.P(MD)No.30435 of 2025

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