

# Benami Transactions (Prohibition) Amendment Act, 2016

by

SV Ramachandra Rao

Managing Director

Resource Inputs Limited

[svrr@resourceinputs.com](mailto:svrr@resourceinputs.com)

At Nellore branch of SIRC of ICAI

- 25<sup>th</sup> December 2016 – Prime Minister Statement

“A benami property law came into being in 1988, but its rules were never framed. It remained dormant for years. We have retrieved it and turned it into an incisive law. We will soon make it operational”

“ Will fix benamis Next”

# Introduction:

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- The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015.
- The Bill seeks to amend the Benami Transactions Prohibition Act , 1988 to
  - (i) amend the definition of benami transactions,
  - (ii) establish adjudicating authorities and an Appellate Tribunal to deal with benami transactions, and
  - (iii) specify the penalty for entering into benami transactions.
- The Standing Committee on Finance submitted its report on April 28, 2016.
- The government has proposed amendments to the Bill on July 22, 2016
- Parliament received the assent of the President on the 10th August, 2016

# Introduction:

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- Now the Act is known as **Prohibition of Benami Property Transactions Act, 1988 (“the Act”)**.
- And not as Benami Transactions (Prohibition) Act, 1988

# Definitions (1/3):

## "Property" means:

- assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;

## "Benami property" means:

- any property which is the subject matter of a *Benami* transaction and also includes the proceeds from such property;

# Definitions (2/3):

**“Benami transaction” means:** A transaction or an arrangement,

- where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

# Definitions (3/3):

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## “Benami transaction” means

- a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;
- a person or a fictitious person, as the case may be, in whose name the *Benami* property is transferred or held and includes a person who lends his name;

# Authorities under the Act (1/2):

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- the Initiating Officer;
- the Approving Authority;
- the Administrator; and
- the Adjudicating Authority



# Authorities under the Act (2/2):

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## Who can initiate action?

- Assistant Commissioner or a Deputy Commissioner of Income Tax.

## Who can approve initiation?

- An Additional Commissioner or a Joint Commissioner of Income Tax.

# Power of Initiating Officer (1/2):

- The Initiating Officer, after obtaining approval shall have power to conduct any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.
- Has power to require any officer of the Central or State Government or a local body or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any **other person** to furnish information and **impound and retain the books** of account or other documents.

# Power of Initiating Officer (2/2):

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## Show Cause Notice:

- The Initiating Officer, issue Show Cause notice to the *benamidar* asking why the property should not be treated as *Benami* property.
- A copy of the notice shall also be issued to the beneficial owner if his identity is known.

## Attachment of Property:

- The Initiating Officer with the approval of the approving authority by order in writing, attach provisionally the property in the manner for a period not exceeding ninety days.
- Subsequently pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of an order by the adjudicating authority.
- However, within 15 days of the attachment the matter to be referred to Adjudicating authority.

# Who will adjudicate?

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- A Chairperson & Two Members can adjudicate.

## **Eligibility:**

- A Chairperson shall be a member of Indian Revenue Service and held the post of Commissioner of Income Tax or equivalent post in that service.
- Members: shall be a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.

## **Term:**

- Their term is 5 years or attaining the age of 62 whichever is earlier.

# Civil procedure code:

- The adjudicating authority is not bound by the procedure laid down by the code of civil procedure, 1908 but shall be guided by the principles of natural justice.
- But, will have the same powers as are vested in a civil court under the Code of Civil Procedure 1908, i.e.
  - discovery and inspection;
  - enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;
  - compelling the production of books of account and other documents;
  - issuing commissions;
  - receiving evidence on affidavits; and
  - any other matter which may be prescribed.

# Adjudication (1/2):

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- Adjudicating authority to issue notice to Binamdar, beneficial owner, any other interested person including a banking company and any person who made a claim on the property within 30 days.
- Adjudication authority shall provide an opportunity of being heard to the *benamidar*, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter pass an order.
- Where the Adjudicating Authority is satisfied that some part of the properties is *Benami* property, but is not able to specifically identify such part, he shall to the best of his judgment as to which part of the properties is held *Benami*.

# Adjudication (2/2):

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- In the course of proceedings if the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is *Benami* property, it shall attach the property and the property shall be deemed to be a property referred to it.
- The Adjudicating Authority may, at any stage of the proceedings, strike out the name of any party improperly joined or add the name of any person to enable him to settle all the questions.
- The Benamidar or any other person can appear in person or take assistance of an authorized person.

# Authorized persons:

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- Authorized person means:
  - Any Officer of a Scheduled Bank
  - Legal Practitioner
  - Any person who passed any accountancy examination recognized in this behalf by the Board.
  - Any other person so declared.
- Orders shall be passed within one year.



# Confiscation of Property:

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- The authority may pass an order confiscating the property held to be a *Benami* property and such property will rest with the Central Government.
- Where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal.
- The Administrator will have the power to receive and manage the property
- Any right of any third person created in such property shall be null and void.
- However, if the property acquired from the benamidar **before issue of notice** for adequate consideration will not be confiscated.

# Appellate Tribunal:

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- A Chairperson & Two Members

## Eligibility:

- A Chairperson shall be sitting or retired judge of High Court.
- A Member of the Indian Legal Service and has held the post of Additional Secretary.
- A Member of the IRS and has held the post of Chief Commissioner of Income-tax or equivalent post

## Term:

- Their term is 5 years or attaining the age of 65 whichever is earlier.
- The Appellate Tribunal shall have all the powers of a civil court.

# Civil Court:

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted.

## Appeal:

- Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within of forty-five days.
- Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty days.

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# **CRIMINAL ACTION**

- For trial of an offence punishable under this Act designate one or more Courts of Session as Special Court
- While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

- Where any person enters into a *Benami* transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or **to avoid payment to creditors**, the beneficial owner, *benamidar* and any other person who abets or induces any person to enter into the *Benami* transaction, shall be guilty of the offence of *Benami* transaction.
- Whoever is found guilty of the offence of *Benami* transaction shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.
- However for offences committed before 01.11.2016 the imprisonment is one year.

# Prosecution (2/2):

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- Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with
  - rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and
  - shall also be liable to fine which may extend to ten per cent of the fair market value of the property

# Exemption:

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- The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act



# Immediate implementation:

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- The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act,
  - the Adjudicating Authority appointed under the Money-Laundering Act, 2002 and
  - the Appellate Tribunal established under Money-Laundering Act, 2012

may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act respectively.

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&  
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***Andhra Pradesh: Nellore, Vijayawada, TADA  
(near Sri City), Visakhapatnam***

***Tamilnadu: Chennai***

***Karnataka: Bengaluru***

***Thanks for your patient hearing!!!***

**SV Ramachandra Rao**

**[svrr@resourceinputs.com](mailto:svrr@resourceinputs.com)**

**91 9849948654**

**Ph:+91 40 64565496,40175056: [info@resourceinputs.com](mailto:info@resourceinputs.com)**



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