



An Assessment of The Benami Transactions (Prohibition) Amendment Act, 2016

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Concept

- The Lok Sabha passed a comprehensive Benami Transactions (Prohibition) Amendment Bill, 2015, with the intent of bringing unaccounted money into the system, as well as seizing benami property and prosecuting those indulging in such activities. The three-fold objective — amending the definition of benami transactions, establishing adjudicating authorities and setting up an Appellate Tribunal to deal with benami transactions, and specifying the penalty for entering into such transactions — is indeed laudable.
- As with all other regulations, viz. Real Estate (Regulation and Development) Act and Land Acquisition Rehabilitation and Resettlement (Amendment) Bill 2015, aimed at increasing transparency and professionalism in the industry, the Benami Transactions Bill is a further step in the same direction.
- The practice of adding the correct name to the property transacted will bring transparency in the residential markets. With increased transparency, title risks will be minimised and buyer confidence during a residential property transaction will get a boost. A fresh breath of professionalism will be ushered in. The general tag of corruption and unaccounted wealth, which follows most developers, will hopefully be limited to the few unethical players.



Features of the Benami Bill

Land Transaction

- Land transactions will be smoother, as the number of benami transactions is large in land. Data on transactions is difficult to come by, and it is expected that the amendment will have a greater impact here. It is a well-known fact that land transactions in India take an average of 1-2 years for completion. With outright purchase of land no longer viable for most developers, the joint venture route has been adopted.
- Post multiple discussions on revenue share and complicated interpretations of permissible floor space index (FSI), it is very often concluded that the land title itself is not clear. Single ownership titles and clarity of titles will hopefully see the light of day with the implementation of the new amendments. This will help developers aiming for a quick and successful closure of joint venture transactions in land and open up land parcels for residential development. Exits by funds participating in transactions will be quicker.



Features of the Benami Bill

Lender confidence

- Lender confidence (whether it be private equity or bank) will also receive a fillip. Today, when titles are not clear, the lending institution very often conducts its own 'title search' for a property before loan approvals. With the risk of increasing bad debts, it is no surprise that banks undertake careful scrutiny of the ownership prior to lending. Multiple ownerships, false ownerships, as well as unknown ownerships plague the residential sector, especially in the mini-metros and non-metro markets.



Features of the Benami Bill

Meaningful rationalisation in residential pricing

- Cash-rich investors who wish to park unaccounted for wealth usually undertake benami transactions in real estate in order to dodge tax authorities as well as to earn a decent return on investments.
- But, there shouldn't be any major impact on residential prices on this account. End-user demand is already present in the market, and there has already been a reduction in the number of active investors in the sector. Prices have remained firm where buyers have met their price expectations, and we see this as a continuing trend. The sector has seen an increase in private equity funding for well-established developers, and this trend is likely to continue. The ones who are likely to suffer are the smaller players who receive money from a few large investors during construction, for there will indeed be a fear among the cash-rich investors of being tracked down.



Features of the Benami Bill

Stringent punitive measures laid down

- The Bill seeks to change the earlier penalty of one to three years to rigorous imprisonment of one year up to seven years, and a fine which may extend to 25 per cent of the fair market value of the benami property. This will hopefully usher in a much-needed cleansing in the real estate sector. The success of the amended Bill will lie in its quick and strict implementation by the empowered authority. Else, the mystery of true ownership will remain unsolved.



Features of the Benami Bill

Impact on supply of residential apartments

The amended Bill seeks to establish four authorities to conduct inquiries or investigations regarding benami transactions:

- (1) Initiating officer
- (2) Approving authority
- (3) Administrator and
- (4) Adjudicating Authority.

It also states that if an initiating officer believes that a person is a benamidar, he may issue a notice to that person and he may hold the property for 90 days from the date of issue of the notice, subject to permission from the approving authority.



Features of the Benami Bill

Impact on supply of residential apartments (Contd.)

What this essentially means is that a lot of responsibility lies on the initiating officer for tracking a benamidar. Secondly, a network of players, the initiating officer, the approving authority, the Administrator and the adjudicating authority, all have to work in tandem to establish a property as benami. Lesser moving parts would have made the foul play easier to track. Moreover, once the property is indeed confiscated, it will either be auctioned or used by the government. Hence, impact on overall supply in residential markets will be minimal.



Observations of the Standing committee

The Standing Committee made the following additional recommendations:

- **Need for a new legislation**

The Income Tax Act, 1961 has adequate provisions to deal with issues of tax evasion and unaccounted wealth, which the Bill is seeking to address. The proposed Bill might result in multiplicity of such provisions. Certain amendments to the Income Tax Act, 1961 to account for unexplained investments made under benami names, will achieve the objectives of the Bill, instead of creating a separate law.



Observations of the Standing Committee

Digitization of land records

- The Committee noted that benami transactions could be pre-empted and eliminated by digitization of land records.
- It noted that amendments in the Transfer of Property Act, 1882 and Registration Act, 1908 may be made to provide for:
 1. online registration of all immovable properties
 2. linkage of Aadhar and PAN numbers of all parties involved in purchase of a property, and
 3. Sharing of data by the registration authorities with tax authorities.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015 by the Minister of Finance Mr. Arun Jaitley. 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,
- (iii) specify the penalty for entering into benami transactions.

The Standing Committee on Finance examined the Bill and submitted its report on April 28, 2016. The government has proposed amendments to the Bill on July 22, 2016.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- The Act defines a benami transaction as a transaction where a property is held by or transferred to a person, but has been provided for or paid by another person.

Amendments proposed by the government (July 22, 2016)

- Standing Committee (SC) recommendation accepted. Following transaction is not considered benami:
- A contract for transfer of property which has been partly executed under the Transfer of Property Act, 1882. However, certain conditions should be met, including:
 - i) stamp duty on such a transaction has been paid
 - ii) the contract has been registered.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- Appeals against the decisions of the Adjudicating Authority may be filed with the Appellate Tribunal.

Amendments proposed by the government (July 22, 2016)

- A time limit of two years should be imposed for the disposal of the appeal



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- The Adjudicating Authority may require a benamidar, or a beneficial owner to furnish documents necessary for an investigation within a 30 day time period.

Amendments proposed by the government (July 22, 2016)

- The 30 day time period should be extended to 3 months, considering the state of land records in rural India.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- If the Initiating Officer believes a transaction to be a benami transaction, he shall issue a notice to the benamidar, and the beneficial owner

Amendments proposed by the government (July 22, 2016)

- Notice shall be served to the beneficial owner, if his identity is known.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- When benami property is confiscated all the rights and titles shall vest with the central government.

Amendments proposed by the government (July 22, 2016)

- Since land is a state subject, it would be appropriate for rights on confiscated properties to vest with state governments.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- On grounds of suspicion, the Initiating Officer, after recording reasons, may initiate investigation after issuance of notice to show cause as to why the property in question should be considered as benami

Amendments proposed by the government (July 22, 2016)

- Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- Certain transactions are exempted from being considered as benami transactions. These include an individual purchasing property in the name of his family members using his 'known sources of income'.

Amendments proposed by the government (July 22, 2016)

- Replace 'known sources of income' with 'known sources'.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- A benami property shall not be re-transferred by the benamidar (who is holding the property) to the beneficial owner (who provided the consideration for the transaction), or any person representing him. If the benami property is re-transferred, it is considered void.

Amendments proposed by the government (July 22, 2016)

- If the benami property is disclosed as part of the Income Disclosure Scheme of the Finance Act, 2016, then the corresponding provisions of the Bill will not be applicable.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- A sitting or former Judge of the High Court will be qualified to be Chairperson of the Appellate Tribunal.

Amendments proposed by the government (July 22, 2016)

- The Chairperson should have at least five years of experience as a High Court Judge.



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015

Benami Transactions (Prohibition) Amendment Bill 2015

- During adjudication of benami properties, the Adjudicating Authority shall provide the benamidar or any person claiming to be the owner of the property, an opportunity to be heard

Amendments proposed by the government (July 22, 2016)

- An authorised representative will include: A person who is relative of the benamidar, or regularly employed by the benamidar, or any officer of the scheduled bank with which the benamidar maintains an account, or Any legal practitioner who is entitled to practice in any civil court in India, or Any person who has passed any accountancy exam, or Any person who has acquired such educational qualifications as specified by the Board (Central Board of Direct Taxes).



Amendments to the Benami Transactions Prohibition (Amendment) Bill, 2015 (Contd.)

Benami Transactions (Prohibition) Amendment Bill 2015

- During adjudication of benami properties, the Adjudicating Authority shall provide the benamidar or any person claiming to be the owner of the property, an opportunity to be heard

Amendments proposed by the government (July 22, 2016)

- An authorised representative should be allowed to represent the benamidar or any person claiming to be the owner of the property.



Relevant Miscellaneous Provisions

Apart from the aforesaid, there are certain significant provisions of the Amendment Act, 2016 which are as follows:

- **Religious and Charitable Trusts– Section 58 (1)** exempt property in relation to charitable and religious trusts from the application of the Act.
- **Special Courts–** According to **Section 50 (1)** the Central Government in consultation with the High Court Chief Justice notify for designation of courts as Special Courts in order to try offences which are in violation of the Act.
- **Penalties – Section 53(2)** provides that the offence of benami transaction shall be penalised with fine (which may extend up to twenty five percent of the fair market value of the property) as well as rigorous imprisonment of at least one year and which may extend to seven years. **Section 54** provides that anyone who furnishes false information in any proceedings under the Act shall be punished with fine which may be ten percent of the fair market value as well as imprisonment of at least six months which may be extended to five years.



Shortcomings of the Act

- It only talks about Black money in real estate in India. Thus the chances are that the same can be routed to other sector or entities to legitimise it. Like NRIs can be used to buy properties. Thus, we need to strengthen our monitoring and prosecuting agency as well.
- Tax Evasion via such measures isn't just a simple case of denying a state its fair share of revenue. It is, in fact, criminal in nature. Such steps put financial stress on state which forces them to spend less on social sectors where poor and marginalised are the biggest beneficiaries.
- The legislation has taken the first step towards eradicating the wide spread corruption in the real estate sector by enacting the Act. However, there was no visible impact because no action was taking against the people who resorted to such illegal activities. It cannot be under-emphasized that the adverse impact of benami transactions on the economy of our nation is immense. There is an immediate requirement to do work at the grass root level to eliminate the existence of such transactions in its entirety.



Conclusion

- The Amendment Act, 2016 appears to be promising enough to address the legal infirmities that existed in the Act. The proper implementation by the executive would cause immense deterrent impact in the society. As for instance, on one hand the provision of confiscation of benami properties sufficiently creates threat in the minds of people; and on the other hand the provision of **exemption** to those who declare their benami properties appears to be a lucrative incentive. Thus, if the new amended law is not handicapped by non-implementation then it can send shivers down the spine of those who have entered into such illegal transactions and also prevent the people from illegally evading taxes.
- The prevention and prohibition of benami transactions is imperative for the healthy economic growth of the country. It is imperative that no one should do an act indirectly which he cannot do directly; in other words, no one should be allowed to take the advantages of the loopholes in the legal system to destabilise the administration of the Government authorities.



Recommendations

Therefore for significant impact of benami laws it is vital the following observations of the Standing Committee are taken into consideration:-

- (i) It is conceded that there are provisions in the **Income Tax Act, 1961** to deal with **tax** evasion and undisclosed wealth but requisite amendments to the same to curb stashing of unaccounted investment under benami names would result in achieving the object of the Act
- ii) The requirement of digitalisation of land records and accordingly it would require amendments in the Transfer of Property Act, 1882 and the **Registration Act, 1908** to provide for **registration** of immovable properties, linking of Aadhar Card and PAN numbers of parties who purchase the property, providing relevant **registration** data to the **tax** authorities
- iii) The application of the Act must be extended to all properties located abroad.



Thank You!

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