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LIFTING OF CORPORATE VEIL: DECODING THE DOCTRINE OF SEPARATE LEGAL PERSONALITY

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Abstract: The Doctrine of Separate Legal Entity established in the Salomon case states that a corporate body or a company has a separate personality of its own which is different from that of its members. The company has a separate entity that is distinct from the members constituting it and as this separate entity is conferred by law, it is known as separate legal entity. This gives rise to the concept of corporate veil which in context means the curtain that separate the company and the members. However, the courts have the power to lift this corporate veil to look into the backstage of the corporates, as the companies being artificial persons require the members to act as its agent to take the necessary steps for the conduct of the business. It is therefore the real minds behind the corporates that actually take decisions and hence any fraudulent act or offence committed makes not only the company liable but also the members behind it. The whole concept of lifting of corporate veil has been established to find out who have actually committed the offence instead of just making the company liable. Moreover, the company being an artificial person does not have the ability required for mens rea to commit an offence or fraud. The main objective of this concept is to safeguard the corporate veil from being a shelter for the ones who commit wrongful acts for their own interest or that is detrimental of the company and its other members.

The following paragraphs of this research paper will deal with the understanding and the analysis of the concepts separate legal entity and lifting of corporate veil with the help of various case laws and instances. Those instances will make the reader understand that the lifting of the corporate veil is just and, in some cases, inevitable in order to safeguard justice. The research papers also attempt to discuss the history and the evolution of this concept to the form it presently in and ends with the conclusion.

INTRODUCTION

The term ‘company’ is a Latin word which means a group of individuals having their meals together. An association of persons can be either incorporated or unincorporated. An incorporated association is formed through a special by the Parliament such as the Life Insurance Corporation (LIC) of India or Damodar river Valley Corporation (also known as body corporates), or through company law (such as the TATA Steel Ltd. etc.). Whereas an unincorporated association is a mere group or aggregate of individuals. Partnership is an example of unincorporated association formed under the Indian Partnership Act. In general sense, a company is an association of like-minded in people who come together in accordance to the Company Law or any other law for the time being in force, in order to conduct an economic activity and earn returns. A corporation is an individual formed in accordance to law and it is an artificial and juristic person. A combination of both artificial and natural person forms a company or a body corporate. The natural persons can be promoters, shareholders, directors, members etc. and the company has come into existence to an act or legislation.

A company as an artificial juridical person, it makes its agents to perform its duties under the official signature which is the common seal of the company. Before the Companies (Amendment) Act, 2015, it was mandatory for a company to possess a common seal at least for the purposes of share certificate and the power of attorney granted to any person to perform duties on behalf of the company. The common seal is the official signature of the company and all the important document as specified in the Articles of Association, has to be under the common seal also known as the official signature of the company.

The management of the company is not in all cases done by the shareholders of the company, it has its own personals for its management and the shareholders derive their profit without the burden of the management.

Even if there are member leaving the company and new member joining the company, it has no affect to existence of the company. Men may come and men may go but the company can go forever. Even if the total membership of the company changes, it remains the same entity with its corporate personality.

No shareholder of the company is wedded to company. All the shareholders of the company have the right to transfer the shares held by them as per the AoA and if not mentioned in Articles of Association, then according the general law relating to the transfer of moveable properties.

Thus, it is very clear and obvious that the company has a corporate personality and separate legal entity and is dissimilar from that of its memberships. This concept leads us to the corporate veil which, in context, means an iron bar which segregates the corporation from the associates of the company. The intangible iron curtain places the company in its front side and the members in stay behind the curtain. This, reduces the possibility of someone peeking through the curtain to take a view of the backstage of the company and makes it strong that the company and the members are two different entities

ISSUES DISCUSSED

1. What is separate legal entity and how does it have an effect in the nature of the corporate bodies?
2. What is the doctrine of lifting the corporate veil emphasizes upon and what is its relation to separate legal entity?
3. What are all the scenarios it which applying the doctrine of corporate veil becomes inevitable?
4. What are all the landmark judgement which displays the significance of the doctrine of lifting the corporate veil?

DOCTRINE OF LIFTING OR PIERCING OF THE CORPORATE VEIL

The term ‘company’ is a Latin word which means a group of individuals having their meals together. An association of persons can be either incorporated or unincorporated. An incorporated association is formed through a special by the Parliament such as the Life Insurance Corporation (LIC) of India or Damodar River Valley Corporation (also known as body corporates), or through company law (such as the TATA Steel Ltd. etc.). Whereas an unincorporated association is a mere group or aggregate of individuals. Partnership is an example of unincorporated association formed under the Indian Partnership Act. In general sense, a company is an association of like-minded in people who come together in accordance to the Company Law or any other law for the time being in force, in order to conduct an economic activity and earn returns. A corporation is an individual formed in accordance to law and it is an artificial and juristic person. A combination of both artificial and natural person forms a company or a body corporate. The natural persons can be promoters, shareholders, directors, members etc. and the company has come into existence to an act or legislation.

As company is an artificial person and has all of its rights and duties as it is conferred by law. At the same time, it provides a chance to misuse this privilege by getting into illegal acts by the members of the company who wish to fulfil their inappropriate objectives through the company by protecting themselves under the shelter of corporate veil. This corporate veil is also used to commit such acts which may make the offender liable if there was no existence of such a corporate veil.

This concept of corporate veil came into existence in order to pull out the offenders who are hiding themselves behind the corporate veil by piercing the same.

In the case of BSN (UK) Ltd. V. Janardan Mohandas Rajan Pillai[1], it was held that the piercing of the corporate veil is performed in cases of defence proceedings such as the evasion of taxes, or in cases where the company or its members depend on the corporate veil to protect themselves from their wrong doings.

[1] BSN (UK) Ltd. V. Janardan Mohandas Rajan Pillai, on 22 January, 1993 (India).

However, in the case of Cotton Corporation of India Ltd. V. G.C. Odusmathd[2], it was held that the piercing of the corporate veil cannot be performed unless it is provided by the statute or that the case is in such a manner that the piercing of the corporate veil is inevitable in order to punish the offenders or to prevent the commission of fraud[3] or any other inappropriate activity.

Moreover, in the case of Premlata Bhaatia v. Union of India[4] it was held that the lifting of corporate veil cannot be done upon the request or wish of the members.

INSTANCES WHEN THE CORPORATE VEIL CAN BE LIFTED

It is dependent upon the circumstances and facts of the case which may require the dilution of the concept of separate entity and this can be done under two ways:

(i) Statutory recognition of lifting of corporate veils
(ii) Lifting of corporate veil under the interpretations of the judiciary

- *Statutory Recognition of Lifting of Corporate Veil:*

The procedure behind this way of lifting of the veil is when the statute expressly provides that the liability has to be borne by the individuals related or the members of the company such as the directors. [5]

Companies act, 2013 has got provisions which expressly provide that the limited liability stops whenever an individual of the company intends to commit any wrong act and tries to protect himself behind the corporate veil, and the individuals will be liable for their acts and the concept of separate entity wouldn't play any part. [6]

There are provisions under Companies Act, 2013 which direct to lift the corporate veil in order to get to see the real faces behind the actions.

The instances for the piercing of corporate veil under statutory recognition:

- Misrepresentation in the Prospectus
- Misdescription of Name
- False Statement, Mutilation, destruction of documents at the time of Inspection
- Failure to Return Application money
- Fraudulent application for removal of name
- Liability for fraudulent conduct of business
- Under any other provision of law

- *Lifting of Corporate Veil Under the Interpretations of the Judiciary*

The lifting of the corporate veil does not happen that easily as the court find it not necessary in most of the cases, or is reluctant to do so. It is at the discretion of the court to decide whether lifting the corporate veil is just and necessary according to the facts and the circumstances of the case. However, in case of the below mentioned reasons it is a must for the courts to break the concept of separate entity and look at the real faces. [7]

- Where the shelter of corporate has been misused for the commission of fraud or improper conduct

- Where the Corporate facade is really only an agency instrumentality

- Where the conduct of the business is against public policy

[2] Cotton Corporation of India Ltd. V. G.C. Odusmathd, on 25 March, 1998 (India).
[3] Life Insurance Corporation of India v. Escorts Ltd., [1986] 59 Comp. Cas. 548 (India).
[4] Premlata Bhaatia v. Union of India, on 30 January, 2006 (India).
[5] Thomas K. Cheng, *The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines*, BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW, Volume 34, Issue 2, Article 2.
[6] *Id.*.
[7] *Id.*

- Incorporation of the company to Evade Taxes

- Avoidance of Welfare Legislation

- To Prevent Fraud and Improper Conduct

- Apart from these the court would not be reluctant to lift the corporate veil whenever it feels that the veil is being misused or used for an unjust purpose or such that the acts of the company is against the public morality or interests of its stakeholders or to restrain itself from fulfilling its responsibilities and duties.

Thus, the court will perform the breaking down of the separate legal entity principle and lifting the corporate veil to look at the persons behind it, whenever it thinks it to be appropriate and needful.

CONCLUSION

It is a well-established fact that the applicability of law is wholly dependent on the facts and circumstances of the cases and an appropriate determination has to be made by the courts at its own discretion, however such a decision made must not prejudice both the principle of separate legal entity as well as the interest of the public.[8] It is better to say that the separate entity is the principle and the doctrine of piercing of the corporate veil is an exemption to it. The strict applicability of this doctrine without the discretion of the judiciary would lead to the failure of the whole purpose of this doctrine.

Though there are mentions of instances such as fraud, improper conduct, evasion of tax etc. are mentioned under which the court can lift the corporate veil, yet these are not exhaustive as day-by-day there are new instances that arise and thus, this topic still remains as a controversial topic of company law.

There exists a balance between the doctrine and the judicial interpretation as the court lifts the corporate veil through the doctrine but penalizes them according to their discretion as individuals without any corporate personality.

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