CONCEPT OF LIFTING THE CORPORATE VEIL

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ABSTRACT

We often discuss how a ‘company’ is treated as a ‘person in the eyes of law. A company is an artificial person as it is a human of its kind. It is a mandate which provides various kinds of information such as the motive behind the corporation of the company, number of directors and managing directors, rules of the company, number of employees & departments, etc. In legal terms, a company is a ‘person’ but it remains a company in another sense.

The company is not real but a juristic person in nature. The company’s personality differs from that of its subscribers, promoters, directors, employees, and other members. The relation between the company’s personality and member’s personality is the protection added to which the former gives the latter.’ The company’s personality acts as a blind screen that hides its members under its blindness, which is being taken as the advantage of committing the illegal act.

This paper will define the various phenomena and aspects of the doctrine of the lifting of the corporate veil. In the hands of the Indian Judiciary, this doctrine is the key of the lock to find the real culprit and held him liable instead of a company.

Keywords: Corporate veil, Company, Personality.

INTRODUCTION

“The doctrine is applicable only in the corporate world. So, we must learn what a company is. The word ‘company’ is derived from the Latin word ‘companies that means com meaning together & panis meaning bread.” In literal terms, a company is a group of persons who eat together. “*In India, the exact definition is defined under the Companies Act, 2013 (hereinafter referred as The Act), which defines it as a ‘company’ that means a company incorporated under this Act or under any previous company law*”. But the definition seems non-exhaustive, so many dignitaries tried to define the definition in their way.

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As per Lord Justice Lindley, “A company is a relationship of numerous people who contribute cash or cash's worth to normal stock and utilize it for a typical reason. The basic stock so contributed is signified in cash and is the capital of the organization. Individuals who contribute to it or to whom it has a place are individuals. The extent of cash flow to which every part is entitled is his offer.”

As per Prof. Haney, “A company is an artificial person created by law having a separate entity with perpetual succession and a common seal. Thus, it can be stated that a company is an artificial person which consists of a group of people who come together to achieve the common objective or goals which are approved by law.”

An organization is not like a real individual unlike human beings, it’s a mere creature of law. The company can be run by its director or the Board of directors.

THE DOCTRINE OF SEPARATE LEGAL ENTITY

“The Doctrine of Separate legal entity is a concept that makes a company a legal person”. It states that the company and the owner have a separate existence and can be made liable separately for the offences. The company and the owner have their legal rights, obligations, and existence that are very different from the person opening or incorporating the company.

For the organization to be indicated as a Separate Lawful body there should be legitimate Registration and Incorporation of the Company. On the off chance that the organization will be appropriately consolidated, just it will have a separate legitimate presence from its-

- Directors - As they manage the working of the organization,
- Members of the organization – They are the genuine proprietors of the organization
- Shareholders - They have bought into the portions of the organization.

In **HL Bolton Engineering Co Ltd v. TJ Graham Sons Ltd**, It was decided by the court that a company can measure up to a living being. As the living individual has its cerebrum and neurological framework that manages the working of the body, likewise the organization additionally has a bunch of minds and sensory system. It even has given for its activity and working in accordance with the guidelines by the overseers of the organization. The majority of the workers in the association are staff individuals and agents who are in the hands of the organization, who do the work, and who can't be appeared as a delegate of the brain or will of the company. Others are chiefs and managers who address the organization's essential getting sorted out musings and direct the working of the organization. The prospect of these chiefs are the musings of the enterprise and is dealt with as such by law.

"In India, The separate legal entity concept was established and developed by the Hon'ble Apex Court in the case of ***Rustom Cavasjee Cooper v. Union of India*** *held that an organization enlisted under the Companies Act is a different lawful individual and particular from its individuals. The property possessed by the organization isn't the property of the investors. This feature of an incorporated company was firstly founded in the case of* ***Salomon v. Salomon & Company Ltd***."

PRINCIPLE OF LIFTING THE CORPORATE VEIL

The owners and the company have separate legal powers and obligations in the eyes of law. The problem exists where the persons working in the company misuse the power and the company is held liable in that case. Though a company is not a human in reality it acts as a human when it is managed by the members of the company.

Whenever the in-charge or the directors of the company commits any fraud or any other illegal activity then the concept of lifting the corporate veil comes into existence. This principle is initiated to look behind the scene and look after the real culprit who did the offence in the name of the company. Thus, wherever the director tries to commit any offence in the name of the company the principle is applied.

The Courts have the power to look at reality and ignore the corporate character of the company to ensure that justice should be done. The approach of our judicial system is too wide in the application of this principle.

Lord Macnaghten observed that "The company is at law a different person altogether from the subscribers to the memorandum, and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them."

"In the United States in the early decision in the ***United States v. Milwaukee Refrigeration Transit Company****, the Court decided*: A corporation will be looked upon as a legal entity as a

general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime the law will regard the corporation as an association of persons."

The basic explanation for what causes special cases for the different element rule subsist can be distinguished. In the first place, albeit a company is a legitimate individual, it can not "be dealt with like some other free individual." For Example, an enterprise is not provided for carrying out a misdeed or wrongdoing requiring confirmation of men's rea except if courts ignore the distinctive objects and finalized the goal set by the chiefs and additionally investors of the organization.

WHEN THE VEIL CAN BE LIFTED

Various conditions arise where the corporate veil can be lifted. "*In* ***Life Insurance Corporation of India v. Escorts Limited and Others***,[1] *the Supreme Court set down two significant cases when the corporate veil is lifted.*"

1. Statutory Provisions:

Officer in Default **–** *"In this section, we will examine the responsibilities of an 'official in default,' which is a term that refers to those individuals who are involved in illegitimate or illegal protests and who are obliged in respect to the crimes that have been committed by them." Following that, this section addresses the joint and many individual obligations of the parties. The phrase official in default may refer to either a supervising director or a director who works full-time.*

Reduced Number of Members **–** *"A public corporation requires at the very least 7 people to carry out its operations, while a privately held firm requires at the very least two individuals (Section 3 of the Act)." In any case, if an organisation has been formed without regard to this fundamental requirement and continues to operate, every part of the organisation that comes to realise this truth is individually liable for any obligations that have been reduced by the organisation during that period of transition.*

[1] Life Insurance Corporation of India v. Escorts Limited and Others, (1986) 1 SCC 264

Improper use of Name[2] – "*Sub-section 4 of Section 147 of the Act gives the obligation of the official who signs Bill of Exchange, Hundi, Promissory note, check under the inappropriate name of the organization*."

"Such official will be to the holder of such Bill of Exchange, hundi, promissory note, or check all things considered; except if it is appropriately paid by the organization."

Fraudulent conduct[3]– In the event that at the hour of the end of the partnership, it is discovered that the exercises of the organization were conveyed to mislead the financial backers of the organization than the people who realized such business would be actually obligated for any misfortune caused to such financial backers as the court may coordinate.

Failure to refund application money[4]– "In the event that the organization neglects to reimburse the application cash to the candidates who were not assigned the offers inside 130 days from the date of issue of the outline, at that point the heads of an organization are mutually and severally responsible to reimburse the application cash with revenue." Nonetheless, this will not any impact the duration of the organization and its different presence.

2. Judicial Pronouncements

"Apart from the statutory provisions, the courts in India at their discretion also lift the corporate veil on certain grounds."

Some of the cases in respect of this are -

Fraud or Improper Conduct – the most well-known ground when the courts lift the corporate shroud is the point at which the individuals from the organization are enjoyed fake demonstrations. The aim behind it is to locate the genuine interests of the individuals. In such cases, the individuals can't utilize the Salomon standard to escape from risk. "*In one of the main instances of **Shri Ambica Mills Ltd***[5] *, the court held that the corporate shroud of the*

[2] Section 147, The Companies Act, 1956
[3] Section 542, The Companies Act, 1956
[4] Seccction 69, The Companies Act, 1956
[5] Shri Ambica Mills Ltd,1897 AC 22

organization can be lifted in instances of criminal demonstrations of extortion by officials of an organization. Essentially, the court punctured the corporate shroud on account of ***VTB Capital v. Nutritek***[6] *and expected the chiefs by and by to take responsibility for getting a credit falsely."*

Tax Evasion– Here and there, the corporate cover is utilized for tax avoidance or to keep away from any sort of expense commitment. "It isn't feasible for the assembly to fill all the holes in the law and hence the legal executive requirements to meddle. In such cases, the courts lift the shroud of the organization to discover the genuine situation of the organization, In the case of ***Vodafone*** **International Holdings B. V. v. Union of India & Anr** held that - Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interests of the shareholders, investors, parties to the contract and also for tax evasion, the Court can always lift the corporate veil and examine the substance of the transaction. The Court, in this case, entitled the Income Tax Office to pierce the corporate veil of the company."

A company as an Agent – For each situation where an organization is going about as a specialist for its investors, in such cases, the rule of vicarious responsibility is applied, and the investors will be answerable for the demonstrations of the organization. The court in such cases would take a gander at the current realities of the cases to decide if the organization is going about as a specialist for its individuals or not. This can be gathered either from the arrangement where it has been explicitly referenced or can be suggested from the conditions of each case.

CONCLUSION

In this manner, it is can be said the precept of the different lawful elements of the organization isn't appropriate altogether in cases. Some examples in which the court developed some new guidelines and raised the corporate veil. Notwithstanding, the justification for penetrating the cover is not comprehensive. It relies upon the current realities and conditions of each case. Aside from the legal arrangements, the Courts in India have consistently lifted this cover in instances of extortion, trick, tax avoidance, and different commitments to attribute the responsibility to the investors.

[6] VTB Capital v. Nutritek, 2012 EWCA

Nonetheless, the idea of penetrating the veil, however, utilized regularly, is as yet in its underlying stage. Additionally, the legal declarations for lifting the shroud shift with each court's perspectives relying upon the current realities of the case. Consequently, the courts should eliminate this vagueness by giving a complete system of examples where the corporate veil can be lifted.