How to Lift Corporate Veil under Companies Act,2013? By Mitali Tiwari

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INTRODUCTION

Before dealing with the lifting of corporate veil it is pertinent to define corporate veil it is pertinent to define what the meaning of a company is. A company has no particular definition but section 3(1) (i) of the Companies Act attempts to provide the meaning of the word in context of the provisions and for the use of this act. It states ‘a company means a company formed and registered under this Act or an existing company as defined in Section 3(1) (ii).

CORPORATE VEIL

A legal concept that separates the personality of a corporation from the personalities of its shareholders, and protects them from being personally liable for the company’s debts and other obligations.

LIFTING OF CORPORATE VEIL

At times it may happen that the corporate personality of the company is used to commit frauds and improper or illegal acts. Since an artificial person is not capable of doing anything illegal or fraudulent, the façade of corporate personality might have to be removed to identify the persons who are really guilty. This is known as ‘lifting of corporate veil’.

It refers to the situation where a shareholder is held liable for its corporation’s debts despite the rule of limited liability and separate personality. The veil doctrine is invoked when shareholders blur the distinction between the corporation and the shareholders. A company or corporation can only act through human agents that compose it. There are two existing theories for the lifting of the corporate veil. The first is the “alter- ego” or other self theory and the other is the “instrumentality” theory.

The alter ego theory considers if there is in distinctive nature of boundaries between the corporation and its shareholders.

The instrumentality theory on the other hand examines the use of a corporation by its owners in ways that benefit the owners in ways that benefit the owner rather than the corporation. It is up to the court to decide on which theory to apply or make a combination of the two doctrines.

STATUTORY PROVISIONS

Section 5 of the Companies Act defines the individual person committing a wrong or an illegal act to be held liable in respect of offences as ‘officer who is in default’. This section gives a list of officers who shall be liable to punishment or penalty under the expression ‘officer who is in default’ which includes a managing director or a whole-time director.

Section 45 – Reduction of membership below statutory minimum: This section provides that if the members of a company are reduced below seven in the case of a public company and the company continues to carry on business for more than six months.

CASE LAWS

1. **SUBHRA MUKHERJEE V. BHARAT COKING COAL LTD.**

In this case a private coal company sold its immovable property to the wives of directors prior to nationalization of the company. In fact, documents were ante- dated to show the transaction was prior to nationalization of the company. Where such transaction is alleged to be sham and collusive, the court was justified in piercing the veil of incorporation to ascertain the true nature of the transaction as to know who were the real parties to the sale and whether it was genuine and bona fide or whether it was between the husbands and wives behind the façade of the separate entity of the company.

2. **BAJRANG PARASAD JALAN V. MAHABIR PRASAD JALAN**

Subsidiary holding company- The court, for the purpose of considering a complaint of oppression held that the corporate veil can be lifted in the cases of not merely of a holding company, but also its subsidiary when both are family companies.

3. **SINGER INDIA V. CHANDER MOHAN CHADHA**

The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud the people. Where therefore the corporate charter is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

4. **B FINANCE LTD. V. SHITAL PRASAD JAIN**

In this case the Delhi High Court granted to the plaintiff company an order of interim injunction restraining defendant companies from alienating the properties of their ownership on the ground that the defendant who had frequently used the money borrowed from the plaintiff company and bought properties in the name of defendant companies. The court did not in this case grant protection under the doctrine of corporate veil.