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BBA LL.B. (Hons.), 5<sup>th</sup> Year.**A CRITICAL STUDY OF JUDICIAL INROAD INTO SEPERATE  
LEGAL PERSONALITY OF COMPANY**

The separate legal entity concept, as it applied to large joint stock companies, evolved throughout much of the nineteenth century, and in particular, during the period between 1840 and 1880. This evolution was gradual and involved subtle changes that occurred on a number of fronts. Common law developments included the changing nature of shares and the refinement of the internal relationships within a company which served to separate a company from its shareholders and thereby differentiated companies from partnerships. At the same time, companies adapted their capital structures and the ways in which they raised capital so as to make themselves more attractive to investors. These practices also reflected the distinction drawn by the investment sector between joint stock enterprises and partnerships. The separate legal entity concept then, was largely developed by the late nineteenth century insofar as it applied to joint stock companies.

The principle of separate legal entity was obtained from the landmark case of *Salomon v Salomon*<sup>1</sup> of UK. This principle represent a fundamental pillar of company law doctrine. However, this principle has created issues of its own way. The principle has the object of significant abuse, though the parties have wrong intention sought to have protection of some kind of malpractices. And it is only for such instance which provoke most of the judiciary in various part of the world to develop exceptions to this central principle. This will ensure that the public interest is adequately protected from wrongdoing and avoid the rigidity of the system.

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<sup>1</sup> (1897) A.C.22, 33

### **The courts' treatment of separate legal personality**

Due to the theory of piercing the veil, there has been a mitigation to the strenuous demand of the logical fulfilment of the principle of separate legal personality. Any framework that would align *Lee v Lee's Air Farming Ltd*<sup>2</sup> in which it was decided, whether the director of a single member family business can legally be employ themselves for the designation of workers and get compensation. In another case of *Walker v Wimborne*<sup>3</sup> were it was decided that directors' obligations inside the corporate groups on the grounds of their same function of the corporate veil can only fade any understanding of the area.

### **Jurisprudence on the Separate Legal Personality**

On one hand companies are entitled to perform its rights as individual legal personality, on the other side, it is limited to access the benefit of this principle. Likewise, in the case of *Collins Stewart Ltd v Financial Time Ltd*<sup>4</sup> where it was decided that a corporate entity is not liable for the compensation for injury to feelings, because a corporate entity does not have feelings to be injured. Meanwhile, it also restrict a company to enter into a legal relationship and the other one is in relation with the incorporation procedure. However there is also a fact that the company has a separate legal personality and the business's company is led by the company rather than its associates. The people who are associates with the company are responsible to represent a particular company can make severe offences and excusing the company as the culprit, not them. Under section 432(2) of the Insolvency Act 1986 which states that the offence committed by the body corporate is with the consent or convenience to any neglect on the part of the members of the company or any person acting in such capacity, then he as well as the body corporate is said to be guilty of the offence and liable for punishment accordingly.

In the recent case, *Jones v Hellard*<sup>5</sup>, the Divisional bench held that the architect was held liable who was providing his own service with a false description. Therefore, the bench excluded the liability of the corporate entity.

There are many other cases which shows that a company acts as a separate legal entity. In some cases it has also observed that, it is not the member but it is the company which has the

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<sup>2</sup> (1960) 3 All ER 420

<sup>3</sup> (1976) HCA 7; 137 CLR 1; 50 ALJR 446; 3 ACLR 529

<sup>4</sup> [2004] EWHC 2337 (QB); [2005] EMLR 64

<sup>5</sup> QBD 23 Mar 1998

proprietary right over its property. Therefore, a member cannot claim any sort of interest on the property owned by the company. The application can be seen in the case of *Macaura v Northern Assurance Co Ltd*<sup>6</sup>, where Mr. Macaura decided to sell his estate to a company instead of all the shares of the company. When the estate was destroyed in a fire and he claimed for compensation from the insurance, the insurance company denied as the estate belongs to the company. In fact the House of Lords dismissed the appeal. As it was observed that even if the comparator hold all the shares of the company but he does not have any legal or equitable rights over the assets of the company.

After all these cases, it appears that the member of the companies does not get any benefit from the principle. But in reality, this is not true as every company has the right to enter into a contract. For instance, if there is a sole shareholder then, the company can make him as the member through offering legally employment enforceable contract through which such person can become the member of the company. So by applying the principle of separate legal entity which enables certain right and obligations to the company as well as the member.

Whereas, in the case of *Bottrill v Secretary of State for trade and Industry*<sup>7</sup>, which rises the concern over the principle of separate legal entity, where one hand it was accepted the company to be a separate legal entity and on the other hand it was believed that there are some conditions which need to be satisfied. However the decision of the court was with a fair conclusion where the presence of Salomon principle but ignores the consequences of the principle.

Meanwhile, the trends to consider a corporate entity separate from its member has been followed in the recent case of *Secretary of State for Business, Enterprise and Regulatory Reform v Neufeld and Howe*<sup>8</sup>, where two controlling directors as well as the shareholders could be considered as the employee to the company? Here the objective of this case was to claim was the employee guarantee payment from the National Insurance Fund. Here the court of appeal reaffirms the essence of separate legal entity of the company and considered both the respondent as the employees of the company.

### **Advantages of separate legal personality**

#### **Legal protection**

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<sup>6</sup> [1925] AC 619

<sup>7</sup> [1999] EWCA Civ 781

<sup>8</sup> [2009] EWCA Civ 280 CA

While a company is formed, it provides legal protection as the owner of the company becomes a separate entity through the incorporation notes. This principle protects owners from personal legal suits and liabilities and security over personal assets. Therefore all the assets and equity of the company are at the risk of exposure, protecting the owner of the company.

### **Liability and Taxation**

As a corporate body is a separate legal entity. The owner of a company are only indebted to a particular interest in an organization. On the other hand shareholders are not personally liable for any company debt and creditors cannot claims over the personal assets for any business debts. Whereas the shareholders are liable to pay taxes on any profit whereas the company has to bear corporate taxes on additional profit.

### **Perpetual Existence**

There is another advantage of every incorporated business having separate identity is its perpetual existence. It is not mandatory that the corporation will dissolves when an owner leaves the company. If there is a case where one of the shareholders dies, then the company may transfer those shares to other shareholder. This is a better opportunity for a shareholder to discontinue with the entity through selling off his shares without dissolving the company.

### **Disadvantages**

While there are lots of advantages, but on the other hand those advantages can also turns to be more difficult. It takes lots of capital budgeting for incorporating a business as startup and cost on taxes are not there in most other structures. Increased in business regulation contains lots of paperwork to keep accurate and up to date in both incorporation and for long run business.

### **Liability of corporations**

Corporations are legal persons .it means that they have rights and liabilities .so far as rights are concerned there is no difficulty in their enforcement .But the liabilities of corporations present very complicated problems. How are the liabilities of an entity which is treated as person only by a fiction of law to be enforced against it? This problem shall be discussed under three headings:-

#### **Liability of a corporation in contract:**

For entering into a contract two things are important i.e. the form of the contract and the capacity of the parties, a corporation has no material existence therefore it always through its agents. It signifies its assent through seal. Therefore the presence of the seal is considered as evidence of the assent of the body corporate. The power of the corporation to enter into contract is limited by the statute .and anything beyond the words of the statute is rendered as ultra vires. Therefore the corporation formed under a statute is liable only for the acts done within the ambit of the statute.

### **Liability of corporations of torts:**

As observed earlier a corporation always acts through its agents therefore the liability of the corporation for the torts is based on the principle of vicarious liability. A corporation is liable for the acts of its servants done in the course of employment but this rule applies only to those acts which are intra vires the corporation. Two things are taken into consideration while imposing the liability upon the corporation i.e. whether the act was done by the authority of the corporation or the act was done without the authority of corporation for the acts done with authority the corporation is liable but for the acts done without the authority the corporation could not be made liable.

### **Liability for criminal acts:-**

The earlier view was that the corporation cannot be made liable for criminal offences for the theoretical difficulties like how to attribute mens rea to the corporations and how can a corporation be punished. The procedural difficulties have been now been removed partly by legislations and partly by judicial decisions and in the recent years the corporations have been made liable for the criminal acts .for instance:- in the case of D.P.P. v Kent and Sussex contractors<sup>9</sup> where the manager of the company has sent in false returns for the purpose of obtaining petrol coupons the court held the company liable and said that though the act was done through the manager the company was liable for the acts. In another case of Moor v Bresler Ltd<sup>10</sup>. The court held the company liable for the criminal acts of the secretary. Moreover a suit can be filed against the company in the capacity of juristic person.

### **CONCLUSION**

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<sup>9</sup> [1944] 1 All ER 119

<sup>10</sup> [1944] 2 All E.R. 515

By looking over all the rulings on the issue, it can be seen that the courts have exercised a very broad discretion to decide whether or not to pierce the curtain and to make the participants accountable for a specific case. Bearing in mind it has led to uncertainty and lack of predictability that the primary objective of corporate law should be clarity and predictability concerning regulatory criteria to raise the veil. The judges will use whichever theory they use, or sometimes occasionally concoct their hypothesis to fasten the blame for reasonable purposes. This is now very clear, however, that incorporation does not necessarily and under all cases shut off personal responsibility. Thus, the sanctity of a distinct organizational name is retained only insofar as the company conforms to the fundamental principles that give it life. The courts also used other evidence to validate the owners' claim of responsibility. This should often be recognized that whilst the courts have often turned to the various legal principles, they also often applied them without much explanation or conviction, and the courts have broad discretion as to whether or not to lift the corporate curtain in a given case. The concept of separate legal entity is of great importance as it imposes rights and duties on non-living persons by attributing legal personality to them. Therefore in the light of above statements the concept of separate legal entity cannot be regarded as a sham concept, though not real but not fully fictitious as well.

#### ENDNOTES

- 1) (1897) A.C.22, 33
- 2) (1960) 3 All ER 420
- 3) (1976) HCA 7; 137 CLR 1; 50 ALJR 446; 3 ACLR 529
- 4) [2004] EWHC 2337 (QB); [2005] EMLR 64
- 5) QBD 23 Mar 1998
- 6) [1925] AC 619
- 7) [1999] EWCA Civ 781
- 8) [2009] EWCA Civ 280 CA
- 9) [1944] 1 All ER 119
- 10) [1944] 2 All E.R. 515