

DE JURE NEXUS LAW JOURNAL

Author:
Harsh Chotwani
Amity Law School, Noida
3rd Year, BBA LL.B. (Hons.)

**“DOCTRINE OF CORPORATE VEIL IN RELATION TO
ENVIRONMENTAL DAMAGES”**

ABSTRACT

The corporate veil is a special case for the standard of isolating the organization and its individuals and hence shielding the company members from liabilities arising through the company's action. This is important on the grounds that compelling organizations have progressively made harm to different segments of the general public. This paper will concern upon organizations enjoying boundless natural debasement and where the Courts have perceived that considering the auxiliary organization responsible isn't adequate; the harm should be balanced holding those in charge of this organization.

INTRODUCTION

The most central Principle of Corporate Law is corporate character. It is on this epitome and natural rule that makes an organization a substance that is altogether unmistakable from its investors, advertisers, directors etc. In this manner, when an organization is fused, a lawful element gets made, which is discrete from its individuals, representatives, investors, directors, advertisers etc., which has prompted the idea of 'corporate veil'. The motivation behind setting up this Doctrine was to give business efficacy and convenience. The principle incitement behind the development of an enterprise or an organization is the restricted responsibility which

is offered to its investors and in light of this restricted risk, the obligation of every investor is restricted to just what the individual has contributed as offers to the organization.

In the Doctrine of 'Lifting the Corporate Veil', the law goes behind the cover or veil of joining to decide the genuine individual or gathering of individuals behind the organization. The Courts and Jurists have respected the idea of 'lifting the corporate veil'. The Courts as indicated by Gower's normal decree would lift the cover when the corporate character of the organization is as a rule conspicuously being utilized as a way to submit extortion, ill-advised direct or where the insurance of public premium is of central concern or where the sole motivation behind shaping the organization was to avoid charges. The organization will be viewed as a relationship of people as opposed to a lawful substance when exactly the same legitimate element is utilized to crush public comfort, legitimize wrong or to safeguard wrongdoing. To have clearness in the idea of 'lifting of corporate cover', corporate character of an organization is needed to be perceived. The courts before didn't append any criminal obligation of the corporate on the ground that being a counterfeit character, they are totally unequipped for having any mens rea, however later the courts adopted an inside and out various strategy wherein, through legal declarations they held that the corporate section can be criminally arraigned.

IS PIERCING THE CORPORATE VEIL POSSIBLE?

Penetrating the Corporate Veil implies looking past the organization as a legitimate individual. Or disregarding the corporate character and paying respect to people instead.

In specific cases, the Courts disregard the organization and concern themselves straightforwardly with the individuals or administrators of the organization. This is called piercing the corporate veil. As a rule, Courts pick this alternative when the case includes an issue of control instead of proprietorship.

Scenarios under which the court consider piercing the corporate veil:-

1. Determine the character of the company

There are cases where the Courts need to understand if the company is an enemy or friend. In such cases, the Courts adopt the test of control. The Courts usually avoid piercing the corporate veil, unless the public interest is in jeopardy. However, to ascertain if a company is an enemy company, the Court might choose to do so.

2. Protect revenue or tax

In issue concerning avoidance or circumvention of charges, obligations, and so on, the Court may ignore the corporate substance.

Envision an organization that is utilized to sidestep charge. In such cases, penetrating the corporate cloak permits the Court to comprehend the genuine proprietor of the pay of the organization and make the said individual at risk for real expenses.

3. Avoid a legal obligation

Sometimes the members of a company can create another company/subsidiary company to avoid certain legal obligations. In such cases, piercing the corporate veil allows the Courts to understand the real transactions.

Imagine a company liable to share 20 percent of its profits with its employees as a bonus. This is a legal obligation. To avoid this, the company opens a wholly owned subsidiary company and transfers its investment holdings to it.

The new company formed has no assets of its own and no business income either. It is completely dependent on the principal company.

By doing so, the principal company reduced the amount of bonus liable to be paid to its employees. The Courts, by piercing the corporate veil, can understand the real intention of the principal company and ensure that it fulfils its legal obligations.

4. Forming Subsidiaries to act as agents

Sometimes, the premise of the arrangement of an organization is to go about as a specialist or trustee of its individuals or of another organization. In such cases, the organization loses its independence for its head. Additionally, the principal is obligated for the demonstrations of such an organization.

5. **A company formed to defeat the law**

In cases where a company is formed for some illegal or improper purposes like defeating the law, the Courts might decide to lift or pierce the corporate veil.

CORPORATE VEIL OR CORPORATE EVIL?

The corporate veil of an organization isolates the obligation of an organization from the risk of its investors. Perhaps the most illustrative cases identifying with an organization's different legitimate character is *Salomon v. Salomon*¹, which was also the starting point of corporate veil doctrine.

SALOMON V. SALOMON

The case concerned one Mr. Aron Salomon, a sole merchant occupied with cowhide and boot making who chose to set up an organization where him and a portion of his relatives were made investors. Notwithstanding, inside a year, the organization went into liquidation as the debentures couldn't be settled completely. Thus, the banks couldn't get back their duty and moved toward the Court, fighting that the debentures were responsible to dropped. They contended that the organization set up by Salomon had no autonomous presence of its own and was only a specialist to additional Salomon's plan. The House of Lords dismissed this contention and held that the joining is done as such as to isolate the individual from the organization and subsequently limit responsibility. The organization's legitimate presence is a production of law which frames the premise of organization and bankruptcy law. Subsequently, the Court maintained this cover to ensure the shareholders and directors and has been referred to as a rule since.

¹ (1897) AC 22

Further, In *Lee V. Lee's Air farming Ltd.*² it was held that there was a valid contract of service between Lee and the Company, and Lee was therefore a worker within the meaning of the Act. It was a logical consequence of the decision in Salomon's case that one person may function in the dual capacity both as director and employee of the same company.

In course of time, the doctrine that an organization has a different and legitimate element of its own has been exposed to specific exemptions by the utilization of the fiction that the cloak of the enterprise can be lifted and its face analyzed in substance.

Subsequently when "TATA Company" or "German Company" or "Government Company" is alluded to, we look behind the distraction of the organization and track down the person who can be related to the organization. This phenomenon which is applied by the courts and which is additionally given now in numerous rules is designated "lifting of the corporate cover". As an outcome of the lifting of the corporate cover, the organization as a different legitimate substance is ignored and individuals behind the demonstration are distinguished independent of the character of the organization. Along these lines, this guideline is likewise called "disregarding the corporate substance"

LIFTING THE CORPORATE VEIL

Lifting the corporate alludes to the chance of looking behind the organization's system (or behind the organization's different character) to make the individuals at risk, as an exemption for the standard that they are regularly safeguarded by the corporate shell

At the point when the lawful situation of an organization and the conditions under which it's anything but a corporate body will be disregarded and the corporate veil is lifted, the individual investor might be treated as obligated for its demonstrations.

The corporate veil might be lifted where the actual rule ponders lifting the veil or misrepresentation or inappropriate lead is expected to be forestalled.

² (1961) AC 12

“It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible”³

COMPANIES BILL 2011

India being one of the main three arising economies, has been yearning for solid and apt corporate laws that will empower the country's worldwide exchange to lead it's anything but a standard with the western industrialized countries. The proposition in the Bill are required to go about as an impetus to cultivating the development of the economy. One of the primary features of this Bill is that it's anything but a component for carefulness that will remunerate informants. This action will permit organizations to follow straightforwardness at each move they start. The creators have referenced a couple of arrangements which acquire duties and liabilities upon a director.

Section 127 - A director of an organization is culpable with detainment or fine if a profit which is announced has not been paid or a warrant which in regard thereof has not been posted inside 30 days of the date of affirmation.

Section 159 r/w 156- It is the obligation of each existing director to imply his Director Identification Number to the organization or all organizations wherein he is a chief inside one month of the receipt of something similar from the Central Government. In the event that any overseer of an organization negates, such director will be culpable with detainment or with fine under Section 159.

Section 166- Under this section different obligations of a director are specified like the obligation of sincere trust, of due and sensible consideration, to act as per the articles of affiliation and so on Any director disregarding these obligations will be culpable with a fine of not less that Rs 1 lakh and not more than Rs 5 lakhs.

Section 184- This section forces an obligation upon an overseer of an organization to unveil his concern or premium, including shareholding, in any organization or organizations, or bodies corporate, organizations, firms, or different relationship of people or in the event that he is

³ LIFE INSURANCE CORPORATION OF INDIA V. ESCORTS LTD, 1986 AIR 1370

involved with any agreement or concurrence with a body corporate in which such chief holds over 2% shareholding or in any case as referenced or any firm in which such director is an accomplice or partner etc. Sub-section (4) is the penalty clause.

Section 194- This section places a forbiddance in forward dealings of protections of the organization, its auxiliaries or in its holding or partner organization by a head of such organization. In any negation with this impact, the director will be culpable with detainment or/and fine as endorsed.

CRITICAL ANALYSIS

An auxiliary organization has its own corporate character unmistakable from the holding organization and can't be a specialist of the parent company⁴. The holding organization possesses a controlling load of the auxiliary organization however may have a completely discrete business and substance. Section 2 (87) of the Companies Act sets out the conditions in which an organization might be considered as the auxiliary of another. In the present globalized world, numerous transnational partnerships own few auxiliaries in different nations and work through them. These enterprises have their quality in non-industrial nations. In India, numerous auxiliaries have been set up. Since the Bhopal Gas Tragedy, a ton of spotlight has been set on these auxiliaries as they cause natural harm however the parent organizations guarantee exclusion from responsibility as they are unmistakable from the auxiliary. Subsequently, regardless of whether the corporate cloak of these auxiliaries can be penetrated to hold the parent organizations responsible is something that should be managed.

BHOPAL GAS TRAGEDY-

The Bhopal Gas Tragedy is maybe the main occurrence where the Court was managing the inquiry with regards to whether an expecting organization is to take responsibility for the natural danger brought about by the auxiliary. In December 1984, a deadly gas got away from a pesticide plant which was an auxiliary of Union Carbide, causing the prompt demise of around 8000 individuals. In the result, various petitions were recorded against the parent

⁴ Adams v. cape industries plc (1990)

company. The case managed ascribing responsibility to parent company for causing one of the world's biggest artificial ecological catastrophes. Justice Seth saw that the corporate veil could be punctured in the current case on fair contemplations, when the auxiliary organizations are lacking to pay the necessary remuneration to casualties. As the parent organization was enrolled in US, inquirers recorded against the holding organization in US Court. The parent organization contended against claims being documented in US courts, denying any risk. The Indian Courts additionally didn't explicitly puncture the corporate cover of Union Carbide, despite the fact that there was proof that UCC claimed and controlled the auxiliary. Strangely, a comparable episode occurred in France where a big hauler, Amoco Cadiz, spilled oil off the bank of Northern France. The abused people stopped carelessness claims against the auxiliary Amoco Transport just as the parent organization Standard Oil Co. The US District Court discovered both the auxiliary and parent organization liable.

DEGREE OF CONTROL-

The Bhopal Gas case was noteworthy on the grounds that it presented exacting risk in India and presented the obligation of care test. It inspected the obligation of the parent organization through the trial of 'control' it practiced over the auxiliary organization (for the situation under the watchful eye of the US Court). A counter-contention to the 'level of control' test is that the parent organization should be held obligated as it should have known or was probably going to know about the chance of irreversible ecological harm. This was valid on account of the Bhopal Gas Tragedy, where an inside reminder really demonstrated that the organization knew about the likely danger of the plant. For another situation, a few synthetic plants were causing contamination in Bichri town in Rajasthan. While it didn't go into explicit undertaking responsibility or shroud convention, the Supreme Court requested every one of the partnered organizations to repay the inquirers as they were totally liable. Perhaps probably the best judgement on big business risk was given a year after the Bhopal Gas Tragedy, in the oleum gas spill case, where outright obligation for ultrahazardous ventures was presented. Then again, in *New Horizons Ltd. v. Association of India*⁵, the Court held that there should be immediate control by the parent organization to expect it to take responsibility. This features the irregularity encompassing venture responsibility as there is wide circumspection moved by Courts to settle on when to penetrate the corporate cloak.

⁵ 1995 SCC(1) 478.

CONCLUSION

Despite the fact that the idea of Separate Legal Personality is significant, it is likewise a fact that it is being utilized to safeguard any obligation for causing boundless monetary and natural harm. This paper meant to feature the unfilled gap that exists in law with regards to crediting ecological risk to parental organizations. India is now forward in this angle. However, In the event that the guideline of big business obligation is appropriately evolved, the privileges of those hurt by unjust demonstrations of organizations could be greatly improved secured. For example, the new fights against Sterlite copper plants were against Sterlite as an auxiliary, yet in addition the holding organization, Vedanta Group. In setting of the new corrosive leak at **Thoothukudi** and considering the improvement of big business obligation, Indian Courts will in general puncture the corporate cloak of the auxiliary and expect the parent organization to take responsibility. Be that as it may, without clear code or rules, there is uncertainty regarding which precise conditions warrant lifting the cover. Meanwhile, undertaking obligation in instances of natural harm should be viewed as the standard, as they will give a dissuading impact on parent organizations. As we are the cliff of causing irreversible natural harm, a higher onus should be put upon global organizations. This will guarantee that they don't mock ecological guidelines only in light of the fact that they can get away from risk, particularly where they own auxiliary organizations in creating states. Courts should utilize the veil teaching in close association with outright responsibility principle on open interest grounds.