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2nd Year, BBA LL.B.**LIFTING OF CORPORATE VEIL- ANALYSIS****Abstract**

One of the most fundamental reasons for incorporating a business is to achieve business liability.¹ The doctrine of lifting the corporate veil is one of the most debated and controversial topics in the business world. A company might be an artificial person but in the eyes of the law it is regarded as a natural person. A company can be described as a group of people who are the beneficiary owners of the property of the corporate body. The concept of lifting the corporate veil deals with the separation of the company from its members, shareholders, etc. to determine the liability of the people hiding behind the façade of corporate veil in cases of any offence or fraudulent conduct. Therefore, the question arises if the doctrine of corporate veil can be used to evade criminal liability and if at all the courts have the power to lift the corporate veil and look at the reality behind it. In this article, we shall try to evaluate the concept of what a corporate veil is and subsequently the doctrine of lifting the corporate veil.

¹ Tulsa Law Review: Piercing the Corporate Veil: A need for clarification of Oklahoma's approach HARRY G. HENN & JOHN R. ALEXANDER, LAWS OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES § 146 (3d ed. 1983). "Incorporation for the purpose of achieving limited liability is usually recognized on the theory that limited liability is one of the principal objectives of incorporation." Id. "Whether there are many, few, or but one shareholder, the principle that a corporation is a legal unit separate from its shareholders... is one of convenience which dictates that corporate rights and liabilities are not to be confused with those of even its sole shareholder." NORMAN D. LATTIN, THE LAW OF CORPORATIONS § 11, at 65 (2d ed. 1971); see also FREDERICK J. POWELL, PARENT AND SUBSIDIARY CORPORATIONS § 1 (1931) (stating the fundamental concept that the corporation is a separate legal entity from its shareholders); 1 CHARLES R. P. KEATING & GAIL O'GRADNEY, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 43, at 733 (rev. perm. ed. 1990) (stating that corporate insulation is not against public policy).

Introduction

The fundamental principle of corporate law entails that a corporation/ company is a separate legal entity/person. It is also referred to as the concept of a corporate personality that provides the company with an identity different from its members. Thus, when a company is incorporated it is separate from its members, shareholders, directors, etc., and therefore the concept of 'corporate veil' was established. The purpose of establishing this Doctrine was to provide business efficacy and convenience.² Limited liability offers a great advantage, for it offers the corporate investor or owner a "cap" on his liability, typically in the amount of his investment.³ Without such limited liability, firms could not attract the amounts of capital needed to operate efficiently, or at all.⁴ Limited liability is especially important today because our society is extremely litigious, and an investor's personal assets would otherwise be subject to seizure if not for the corporation being an artificial entity which is distinct and separate from the investor.⁵ However, with the privilege that comes with limited liability comes the responsibility of operating the corporation in such a way as to not wrongfully injure third parties with whom the corporation deals with directly or indirectly. In a company, the liability of the members is limited to only what he or she has contributed as shares and therefore the creditors can recover their money only from the company and cannot sue the members individually. But in the Doctrine of 'Lifting the Corporate Veil', the law goes behind the mask or veil of incorporation to determine the real person or group of people behind the company.

The Courts from time to time have disregarded the concept of the corporate veil. Gower's is a very common dictum, namely, that the courts would lift the veil "when corporate personality is being blatantly used as a cloak for fraud or improper conduct."⁶ The courts have lifted the veil in which they feel the corporate personality has been blatantly misused to commit fraud, improper conduct or where the protection of public interest is of paramount concern or where the sole purpose of the company was to evade taxes. ' Another definition of lifting the veil is that it is "a tactic used by the judiciary in a flexible way to counter fraud, sharp practice, oppression and illegality."⁷

² Navin Kumar Jaggi, The Doctrine of Lifting the Corporate Veil And The Judicial Trend In Determining The Criminal Liability Of Corporations, LinkedIn, (August 14, 2021, 1:29 PM) <https://www.linkedin.com/pulse/doctrine-lifting-corporate-veil-judicial-trend-criminal-jaggi/>

³ Hanson v. Bradley, 10 N.E.2d 259, 263-64 (Mass. 1937).

⁴ Anderson v. Abbot, 321 U.S. 349, 362 (1944)

⁵ Tulsa Law Review: Piercing the Corporate Veil: A need for clarification of Oklahoma's approach

⁶ Gower, Modern Company Law, (5th edition 1985), p137

⁷Smith & Keenan, Company Law (7th ed 1987), p. 19. They do not mention that lifting the veil is practised

Therefore, in the above-mentioned scenarios the corporation can be regarded as an association of person rather an artificial person or a legal entity to affix the criminal liability for the crime occurred.

Mens Rea refers to a criminal intent and its translation from Latin is “guilty mind”. Mens Rea is statutorily required in order to convict a particular defendant of a particular crime.⁸ Earlier the courts used to enforce the principle of a corporate veil and did not affix criminal liability on the ground that as a company is an artificial person, it is incapable of having any Mens Rea. But in the recent times, the courts have looked at the law with a different approach and have lifted the corporate veil from time to time and held that the person responsible can be criminally prosecuted and cannot be allowed to mask behind a corporate shell to shield from any liability.

The Companies Act, 2012 states that as the corporation bears its own name and has a seal of its own, the corporation is entirely separate from that of its shareholders. The assets of the corporation incorporated are distinct and separate from those of the members and the corporation can sue and be sued exclusively without any liability being followed up on the members more than what is limited by the capital invested by them. The concept of a company being a separate legal entity was first handed down by the decision of the House of Lords in *Salomon v. Salomon & Co.*⁹

Generally, the legal status and the corporate personality of a company is respected. There have been a major number of instances when the courts have upheld the basic principle of corporate entity and resisted the temptation to break through the corporate veil.

In a landmark judgment decided by the circuit court for the Eastern District of Wisconsin, it was held that, “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, protect fraud or defend crime, the law will regard the corporation as an association of persons.”¹⁰

Meaning of the Doctrine of Corporate Veil

also in less dramatic situations, and by the legislature as well. And see also Northey & Leigh, Introduction to Company Law (4th ed 1987), p.20, enumerating 4 instances in which the veil would be lifted: in time of war, to determine the enemy character of the company; in cases where the company was formed for a fraudulent purpose; as between a holding company and its subsidiaries; and in revenue cases

⁸ Mens Rea, Law Cornell, (August 12, 2021, 9:29 PM) https://www.law.cornell.edu/wex/mens_rea

⁹ [1897] AC 22 (House of Lords)

¹⁰ *United States v. Milwaukee Refrigerator Transit Co.*, 145 F. 1007 (1906)

In simplest of term, the doctrine of lifting the corporate veil means lifting or disregarding the corporate veil and looking behind at the real person who are in control of the company. By lifting the corporate veil, the person concerned will not be allowed to take shelter behind the corporate personality of the corporation and can be held liable for the acts committed. According to the definition of Black Law Dictionary, “piercing the corporate veil is a judicial process whereby the court will disregard the usual immunity of corporate officers or entities from entities from liability for wrongful corporate activities.”¹¹ The doctrine holds that the corporate personality and limited liability of stockholders may be disregarded and personal liability may be imposed on stockholders, officers and directors in the case of fraud or other wrongful acts done in name of corporation. The court, however, may look beyond the corporate form only for the defeat of fraud or wrong or the remedying of injustice.¹²

There is also an instrumentality rule relating to subsidiary corporations. This principle of corporate law permits the court to” disregard the corporate existence of a subsidiary corporation when it is operated solely for the benefit of the parent corporation, which controls and directs the activities of the subsidiary while asserting the shield of limited liability.”¹³

The instrumentality rule is also known as the alter ego doctrine and the aim of this doctrine is to remove the corporate immunity from liability when the corporate nature of an organization is a sham. The court is considered to pierce the corporate veil when this rule of instrumentality is applied. But there is ambiguity in the application of this provision as different approaches have been used by the courts to apply the veil in each case. There have been cases in which the court in the same case both ignore the veil completely and issue injunctions against the company as a separate legal entity. Something of this sort was held in Vaughn v. Chrysler Corp.¹⁴

Four approaches adopted towards the Doctrine of Lifting the Corporate Veil by the Courts

¹¹ Black’s Law Dictionary: Piercing the corporate veil

¹² Hanson v. Bradley, 298 Mass. 371, 381, 10 N.E.2d 259, 264.

¹³ Instrumentality Rule, Law Jrank, (August 10, 2021, 1:21 AM) <https://law.jrank.org/pages/7684/Instrumentality-Rule.html>

¹⁴ Cf **Vaughn v. Chrysler Corp.**, 442 F.2d 619 (10th Cir. 1971) (parent company was directly and strictly liable for defective work done by a subsidiary on a truck manufactured by the parent). Although it did not need to pierce the corporate veil to reach the parent's assets, the court used an analysis similar to that used in veil-piercing cases. The court stated the subsidiary was not set up as a sham (i.e., instrumentality), citing adequate capitalization and sufficient independence from the parent. Id. at 621. Furthermore, the court did not find fraud. Yet, the court stated there was no reason to defeat the liability of the parent when the parent controlled the subsidiary. Id. at 622.

Different approaches are adopted to the Doctrine of the lifting of corporate veil from peeping behind it to ignoring it completely. There are mainly four categories

1. Peeping behind the Veil

The first category is the one that is the least offensive and is the one that least disregards the corporate personality with respect to the separate entity theory. This theory can be termed as an act of curiosity. The veil is only lifted enough to get the information involving the people who have the control of the company. For example- who are the shareholders, what are their shareholding, etc, to basically get an idea of the nature of the company and what that company deals in. One of the landmark cases is the Daimler case. The question in the case was whether the defendant which was a British Company, should pay the plaintiff, a British registered company, even though all the latter's directors and shareholders were German residents. Lord Parker, to whose judgment the lifting of the veil is attributed said "*a company may assume an enemy character ... if its agents or the persons in de facto control of its affairs ... are resident in an enemy country ... The character of individual shareholders cannot of itself affect the character of the company ... [it] may, however, be very material on the question whether the company's agents, or the persons in de facto control of its affairs, are in fact adhering to, taking instructions from, or acting under the control of the enemies. This materiality will vary with the number of shareholders who are enemies and the value of their holdings.*" Not only have the actions of the directors been regarded as those of the company, but also their mind has been regarded as the company's, in cases where knowledge or will are required, as for assessing the negligence¹⁵ or criminality of the company.¹⁶

Peeping behind the corporate veil enables the Court to satisfy itself as to the true legal situation of the case,¹⁷ to make an order against the company itself.¹⁸ Therefore, peeping behind the veil is only the first but essential step by which the court examine certain features of the company be it its composition, control, type, character, etc and does not lead to personal liability of the

¹⁵ Lennard's Carrying Co. v Asiatic Petroleum Co. [1915] AC 705, HL

¹⁶ Corford v Carlton Bank [1900] 1 QB 22. Eve

¹⁷ As, for example, in Simpson v Norwest Holst Southern Ltd. [1980] 2 All ER 471, when due to peeping behind the veil the court was ready to accept the explanations of the plaintiff's solicitors as to why it was so difficult for them to discover who was the real defendant in their claim for damages. In consequence, it allowed the claim, even though it was filed after the limitation period of 3 years. And see, as another example, the cases of Re Express Engineering Works [1920] 1 Ch 466, CA, and Parker & Cooper Ltd. v Reading [1926] Ch 975, where the courts were satisfied that the same persons were both the only directors and shareholders of the company so that their decisions taken in one configuration could be regarded as taken by the other.

¹⁸ As in B v B [1979] 1 All ER 801, when peeping behind the veil disclosed that the husband of the plaintiff was one of the major shareholders (and the director) of a company. This information was sufficient for the court to issue an order of disclosure against the company itself.

shareholders for the debt of the company. After collecting this information, the courts decide what to do with it - whether to be satisfied with it and adjudicate on the company alone, or to move up the ladder of lifting the veil, to more serious repercussions.¹⁹

2. Penetrating the Veil

The second category of lifting the veil affixes a little more liability upon the company's shareholder's as compare to just peeping. The court can personally grasp the shareholders in control and hold them liable for the acts of the company or to establish their direct interest in the company's assets.

The most adequate example would be a provision of The Indian Companies Act, 1956, in which personal, unlimited liability for the company's debt is imposed upon the shareholder's if the "company continues to carry on business for more than 6 months with fewer than the minimum number of members, in case of public company, below seven, or in case of private company, below two, and the remaining members are cognisant of the fact that it is carrying on business with fewer members than seven or two."²⁰

The other aspect of penetrating the veil would be for the recognition of a direct interest of the shareholders in the company's assets.²¹ This aspect is clear by the judgment laid down in the *Macaura* case²² "no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein";²³ and further on: "the corporator even if he holds all the shares is not the corporation and neither he nor any creditor of the company has any property rights legal or equitable in the assets of the corporation."²⁴ *Macaura's* claim was dismissed, therefore, on the ground that he had no insurable interest in the assets of the company.

A special mode of penetrating the veil is by way of declaring an agency relationship between the controlling shareholders and their company. The concept of agency does not precede lifting the veil and the courts reach the conclusion that an agency relationship exists between the

¹⁹ The Modern Law Review, May, 1990, Vol. 53, No. 3 (May, 1990), pp. 338-353: From peeping behind the Corporate Veil, to Ignoring it Completely by S. Ottolenghi.

²⁰ Indian Companies Act, 1956, § 45, Acts of Parliament, 1956 (India)

²¹ The Modern Law Review, May, 1990, Vol. 53, No. 3 (May, 1990), pp. 338-353: From peeping behind the Corporate Veil, to Ignoring it Completely by S. Ottolenghi; p 344

²² *Macaura v. Northern Assurance Co.* [1925] AC 619 (HL)

²³ *Ibid.* p626 at Lord Buckmaster

²⁴ *Ibid.* p633 by Lord Wrenbury

shareholders and the company and therefore agency is only a way by which the courts penetrate the veil to construct the direct interests of the shareholders.

In terms of fraudulent activities, the company is used as a puppet by the shareholders and the shareholders were the ones pulling the strings. Legally, the company was the agent and the shareholders are the principle and the court shall put aside the corporate veil and hold liable the individuals responsible.²⁵ Therefore in such cases the veil is penetrated by peeping behind and discovering the true relationship between the controlling shareholders and the company to make the controlling shareholders responsible for the acts committed.

3. Extending the Veil

The next approach of lifting the veil is by its extension so that a bunch of companies can be brought under its purview. This technique is applied in cases when the companies are conducting a common activity therefore rather than referring to each one of them individually or separately, the court regards all of them as a single entity under one extended veil of incorporation.

One of the cases to understand the concept of extension of the corporate veil would be *DHN Food Distributors Ltd. v London Borough of Tower Hamlets*.²⁶ In the present case the shareholders of the parent company owned all the shares of the subsidiaries. Therefore, the subsidiaries were bound to the parent company and had to do just what the parent company demanded and therefore the court treated the three companies i.e., one parent company and the two subsidiaries as one.

The Court's attitude in the present case regarding the four categories was first peeping behind the veil to see the shareholdings of the three companies at stake. It revealed that the shareholders (and directors) of all the three companies were identical.²⁷ This would also constitute as an actual penetration of the veil, by recognising the direct interest of each of the components in the assets of the enterprise. Then it proceeded to penetrate the veil, by applying the partnership approach: 'the group is virtually the same as a partnership in which all the three companies are partners.'²⁸ The third step is the extension of the veil to cover the entire group,

²⁵ *Wallersteiner v Moir (No. 1)* [1974] 3 All ER 217, 238 (CA).

²⁶ [1976] 3 All ER 852.

²⁷ *DHN Food Distributors Ltd. v London Borough of Tower Hamlets* [1976] 3 All ER 852.

²⁸ *DHN Food Distributors Ltd. v London Borough of Tower Hamlets*, [1976] 3 All ER 852. p860, by Lord Denning M.R. The difficulty of establishing the real relationship between the companies is manifested here: regarding them to be partners, although having said beforehand that they were 'bound hand and foot to the parent company'.

seeing it as one, comprehensive entity: 'These companies as a group are entitled to compensation not only for the value of the land but also compensation for disturbance.'²⁹

Therefore, the courts may exercise a series of steps including all the techniques of lifting the veil to look at the person responsible behind the corporate veil.

4) Ignoring the Veil

The fourth and most extreme form of lifting the veil is when the courts ignore it completely. This is regarded as 'disregarding' or 'ignoring the veil'. This approach is adopted by the courts when the evidence suggests that the company was formed as a means to defraud the creditors or commit frauds and circumvent laws and not for any commercial or other legal purposes.

Various names have been given by the courts over the time to describe such companies which are not genuine but only a means to some other end. 'Cloak', 'Sham', 'Instrumentality', 'puppet' or even a bubble company are a few.³⁰ However, although the behaviour of the company's shareholders might be malicious in nature but this method of disregarding is considered a bit extreme.

Not only is it against the legal system: taken literally, it deprives the courts themselves of the possibility of issuing orders against the company as such, if and when they deem fit.³¹ Thus, for example, when the court states that the company was no more than 'a device and a sham, a mask which he holds before his face in an attempt to avoid recognition by the eye of equity,'³² it contradicts its own order issued later on against this same company.³³

Therefore, there is no need to disregard the separate existence of the company in order to lift the veil.

Statutory Provisions

²⁹ DHN Food Distributors Ltd. v London Borough of Tower Hamlets, [1976] 3 All ER 852.

³⁰ See, for example, In re Carl Hirth, exp Trustee [1899] 1 QB 612; Gonville's Trustee v Patent Caramel Co. Ltd. [1912] KB 599; In re Fasey, ex p Trustees [1923] 2 Ch 1; Woolfson v Strathclyde Regional Council 1979 SC (HL)

³¹ The Modern Law Review, May, 1990, Vol. 53, No. 3 (May, 1990), pp. 338-353: From peeping behind the Corporate Veil, to Ignoring it Completely by S. Ottolenghi.

³² Jones v Lipman [1962] 1 WLR

³³ The court later decreed specific performance of the sale of the land against both the contracting party and his company. As the sale should have been executed by the company, being now the owner of the land, this fact in itself shows the flaw in the previous approach by the court in totally disregarding the separate legal entity of the company. Sealy summarises this case, saying that 'Ignoring the veil, Russell, J. ordered specific performance against both the defendant and his company'. It seems that the use of 'penetrating the veil' instead of 'ignoring the veil' would have removed this inner-contradiction

The Indian Companies Act, 1956 contains provision embedded in it that states when can the corporate veil be lifted and the law can hold the individuals hiding behind the veil accountable for certain activities.

1) **Reduction of Membership-**

The minimum number of members required to operate a company is two in case of a private company and seven in case of a public company. Section 45 of the Act of 1956 states that members would be held liable for the payment of the debt of the company if the membership of the company is reduced below the statutory requirements. This provision applies to members, who after the membership falls below the statutory limits, remain as members for a period of more than six months.

In the case of **Madan Lal v. Himatlal & Co.**³⁴ *“the respondent filed suit against a private limited company and its directors for recovery of dues. The directors resisted the suit on the ground that at no point of time the company did carry on business with members below the legal minimum and therefore, the directors could not be made severally liable for the debt in question. It was held that it was for the respondent being dominus litus, to choose persons of his choice to be sued.”*³⁵

2) **Holding and Subsidiary Company**

Section 212 of the Act of 1956 provides that *“in relation to financial disclosure a true and fair view of the overall position of the group is to be presented and therefore, the parent company must present financial statements of its subsidiaries as well as its own individual statement, thereby avoiding any misleading picture given by presenting only the financial statement of the parent company.”*

But the provision does not specifically mention that the parent company would be liable for the debts of its subsidiary companies. The sole objective seems to be to ensure that accurate data has been presented by the companies.

3) **Fraudulent Activities –**

Under Section 542 of The Indian Companies Act, 1956, *“if any business of an organization has gone ahead with the aim to defraud creditors of the organization or creditors of some other individual or for any deceitful reason, who was intentionally a*

³⁴ [2009] 99 Comp. Cas. 266 (M.P)

³⁵ Madan Lal v. Himatlal & Co., [2009] 99 Comp. Cas. 266 (M.P)

party to the carrying on of the business in that way is subject to imprisonment or fine or both.”³⁶ This applies regardless of whether the organization has been or is in course of being twisted up.

4) Section 275 of the Indian Companies Act, 1956 provides that “*subject to the provisions of Section 278, this section provides that no person can be a director of more than 15 companies at a time. Section 279 provides for a punishment with fine which may extend to Rs. 50,000 in respect of each of those companies after the first twenty.*”³⁷

5) Misdescription Of the Company

Section 147(4) of The Indian Companies Act, 1956, gives that “*if any officer of the organization or other individual acting on its benefit signs or approves/authorized to be signed by the organization any promissory note, bill of exchange, order or cheque for money or goods, endorsement in which the organization’s name is not specified in readable letters, he is obligated to fine and he is personally liable to the holder of the instrument unless the organization has effectively paid the sum.*”³⁸

6) Furnishing false statements

Under Section 448 of the Act, “*if, in any return, report, certificate, financial declaration, prospectus, statement or other document necessary, any person makes false or wrong statements or conceals any relevant or material evidence, that person is liable under Section 447 of the Act.*”³⁹

7) Failure To Refund Application Money

As indicated by Section 69(5) of The Indian Companies Act, 1956, states that if the organization neglects to refund the cash within 130 days of the date of issue of the prospectus, then the executives of an organization are mutually and severally at risk to reimburse the application cash with premium.⁴⁰

³⁶ Indian Companies Act, 1956, § 542, Acts of Parliament, 1956 (India)

³⁷ Indian Companies Act, 1956, § 275, Acts of Parliament, 1956 (India)

³⁸ Indian Companies Act, 1956, § 147(4), Acts of Parliament, 1956 (India)

³⁹ Indian Companies Act, 1956, § 448, Acts of Parliament, 1956 (India)

⁴⁰ Indian Companies Act, 1956, § 69(5), Acts of Parliament, 1956 (India)

8) **Section 127 of the Companies Act, 2013** states that a director of a company is punishable with imprisonment or fine if the declared dividend has not been paid or a warrant which in respect thereof has not been posted within 30 days of the date of declaration.⁴¹

9) Repeated Offence

Pursuant to Section 449 of the Act, *“if a company or an officer of a company commits an offense punishable by a fine or imprisonment and that offense is committed again within a period of three years, the company and the officer shall pay twice the penalty for that offence, in addition to any imprisonment for that offence.”*⁴²

10) **Section 166 of the Companies Act, 2013** states the duties of a director such as the duty of good faith, of due and reasonable care, to act in accordance with the articles of association etc. Any director in violation of these duties will be punishable with a fine of not less than Rs 1 lakh and not more than Rs 5 lakhs.

11) **Section 194 of the Companies Act, 2013** puts a prohibition in forward dealings of securities of the company, its subsidiaries or in its holding or associate company by a director of such company. In any contravention to this effect, the director will be punishable with imprisonment or/and fine as prescribed.

Judicial Provisions/ Precedents

Besides the statutory provisions laid down to ‘lift the veil’ various judicial inroads into the principle of separate personality have been pronounced by the Judicial Courts.

Fraud or Improper Conduct, Protection of revenue, Determination of enemy character of a company, where a company acts as an agent for its shareholders, in case of economic offences, in cases when a company is a sham or a cloak are just some of the few instances the courts have lifted the corporate veil to see the real state of affairs and establish liability.

The courts in cases of tax evasion have the right to lift the corporate veil if it is used for tax evasion or the avoidance of tax obligations. If the company was founded by the assessed solely

⁴¹ Indian Companies Act, 2013, § 127, Acts of Parliament, 2013 (India)

⁴² Indian Companies Act, 1956, § 449, Acts of Parliament, 1956 (India)

and simply as a means of escaping a super-tax and the company was nothing more than the assessed himself. It did not do business, but was merely created as a legal entity to obviously collect dividends and interest and hand them over to the assessed as planned loans.

The courts are not hesitant to lift the corporate veil in cases of fraud and misconduct. The Courts from time to time have held up the thought that the provision laid down in *Salomon v. A. Salomon & Co. Ltd.*⁴³ should and will not be utilized as a means to commit fraud and deceive people.

In the case of *Jones v. Lipman*⁴⁴, “a man contracted to offer his territory and after that point altered his opinion with a specific end goal to keep away from an order of specific performance, he transferred his property to an organization.” The court, in this case, held that the organization here was “a veil which (Mr. Lipman) holds before his face trying to maintain a strategic distance from acknowledgment by the eye of equity”⁴⁵ Therefore the court ordered for specific performance both against Mr. Lipman and the organization.

The case of *Subhra Mukherjee v. Bharat Coking Coal Ltd*⁴⁶ was a case regarding sham and façade. In this case immovable property was sold to the wives of the directors prior to the nationalization of the company. In fact, it was presented that the 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.⁴⁷

Then there is the case of *Bajrang Prasad Jalan v. Mahabir Prasad Jalan*⁴⁸ regarding subsidiary/holding company. In this 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.

⁴³ Supra note 9

⁴⁴ [1962] 1 WLR 832

⁴⁵ *Jones v Lipman* [1962] 1 WLR 832

⁴⁶ [2000] 101 Comp. Cas. 257 (SC), [2000] 3 SCC 312

⁴⁷ Corporate Veil, Law Octopus (August 5, 2021, 2:35 PM) https://www.lawctopus.com/academike/corporate-veil/#_edn20

⁴⁸ [2000] 6 Comp LJ 377

In the case of *Singer India v Chander Mohan Chadha*⁴⁹ it was reinforced that the concept of corporate entity was evolved to encourage and promote trade and commerce and not to commit illegalities or to defraud the people. Therefore, situations in which 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.

Conclusion

The principle of separate legal entity is the fundamental aspect of Company law and the instances of piercing the veil are the exceptions to this rule. This exception merely seeks to strike a balance between the interest of the public and the concept of separate personality and therefore this is also the reason that there are no definitive bounds to this approach and can be used as a flexible tool to ensure justice.⁵⁰

The doctrine of piercing the corporate veil is not subject to any specific rule or any statutory provision in particular. It is usually based on the facts and circumstances of each matter. Therefore, we can also say that incorporation does not cut off individual liability from the shareholders in all conditions and the people seeking shelter behind the façade of corporate veil can still be held liable by the Courts for their actions.

⁴⁹ [2004] 122 Comp. Cas. 468 (SC)

⁵⁰ Lifting of the corporate Veil: - India Scenario, Legal Services India (August 6, 2021, 10:15 AM)
<http://www.legalservicesindia.com/article/1876/Lifting-of-Corporate-Veil:-Indian-Scenario.html>