Written by:
Ms. Achint Kaur, Counsel, Khaitan & Co
Mr. Shreya Mishra, Associate, Khaitan & Co

CORPORATE GOVERNANCE | PIERCING OF THE CORPORATE VEIL – LATEST TRENDS

INTRODUCTION

In line with this year's World Economic Forum theme of "*Cooperation in a Fragmented World*", in this globalized business economy marked by co-existence and interdependence, with the corporate world witnessing frauds, insider trading and other forms of mismanagement, good corporate governance built upon the tenets of accountability, transparency, participation, fairness and responsibility is the need of the hour and a linchpin for building a high-performance culture. In view of a company being an artificial person having its separate juristic identity, with a perpetual succession, Chief Justice Marshell has rightly said, *"A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence"*[1]. A company having a distinct identity from its stakeholders must ensure maximum engagement with the shareholders, officials, directors, managers, and employees, having community of interests. Prioritizing stakeholder interests, retaining talent and best resources for collaborations across the world is the key to profitability and ensuring the company's sustenance in this liberalized and globalized world. Hence companies must assess updating their corporate governance practices and board's oversight to serve as the anchoring framework to deal with complex business issues. A company designated as an artificial person conducts business through its stakeholders, thus, it must create a robust structure of governing rules, processes, and mechanisms to manage the affairs in accordance with the statutory rules and regulations. A good corporate governance structure in a company ensures that the voices of the minority are heard, there is a reduction in arbitrary exercise of power by the key managerial personnel and views of the vulnerable are considered. In view of the latest trends on corporate governance, the steps taken by the companies towards risk management, cyber security, diversity inclusion and sustainability disclosures, will continue to be the best guideposts to evaluate their performance on good governance.

A company's corporate governance policies reflect its vision and should be robust enough to ensure participation, transparency, effectiveness, ethics, efficiency, accountability, checks and

[1] Trustees of Dartmouth College v. Woodward 4 Wheat. 518 [1819]

balances, independence, and adherence to rule of law. However, assuring the existence of a governance structure is not enough; proper implementation of the governance policy is a critical determinant.

India has recurrently witnessed the failure of corporate governance in big organizations resulting in multiple scandals and incidents. For example, "*The Satyam Scam*" where, despite having multiple eminent personalities on board, the unethical conduct of the executive and absence of checks and balances caused major setbacks for its stakeholders, the industry and economy at large. This incident reflects the gap in implementation of statutory regulations and the policies of corporate governance. Government of India realizing the importance of having a robust legal framework for ensuring good governance and to fill in the lacunae, brought various legislations into effect to promote and ensure corporate governance. The Companies Act, 2013 (**"Companies Act"**) can be regarded as a *grundnorm* for existence of corporate governance laws in India, today. Considering the Companies Act, the Ministry of Corporate Affairs notified Companies Rules 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board of Directors, and its powers and accounts. Furthermore, the Securities Exchange Board of India notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for equal treatment of all shareholders, including protection against minority shareholders, ensuring no discrimination against foreign shareholders, transparency by proper disclosure and governance of listed companies.

The responsibility of good governance was taken up by not only the legislators and the executive but also the judiciary. In the last few decades, the judiciary through its activism had widened the scope and applicability of corporate governance by compelling the corporations to ensure good corporate governance practices and to abide by the applicable rules and regulations. In the current legal framework, a company being a distinct juristic person, its members are protected from the liabilities arising out of the actions of the company. Considering the same, the courts have reviewed the concept of "corporate veil" which acts as a shield for members against the liabilities, obligations, debts, or losses of the company. The legal principle was developed by the House of Lords in the case of *Aron Salomon v. A. Salomon and Company Limited*,[2] where they 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,*

[2] Aron Salomon v A. Salomon and Company Limited (hereinafter referred to as the "**Salomon Case**"), [1896] UKHL 1.

and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act."

However, the corporate veil cannot be considered as perpetual. Despite a company having a separate legal entity and corporate personality, in the interest of equity, fairness and justice, courts have lifted or pierced the corporate veil to penalize the individuals controlling and steering the company and hold them individually accountable for the acts and omissions of the company, especially in cases of any unethical conduct or poor governance. For instance, misstatement in prospectus, ultra-vires acts, improper and fraudulent conduct, tax evasion, public interest, etc.

EMERGENCE OF THE CONCEPT OF CORPORATE GOVERNANCE AND ITS EVOLUTION OVER THE YEARS

Corporate Governance refers to the checks and balances within the corporate structure that help create long-term value enhancement for the stakeholders in a company[3]. The company's stakeholders whether individuals, institutions, or government entities, need assurance that their investments are protected and used in a productive manner. Corporate governance is about preserving these inter-related interests, "concerning the relationships between a company's owners, managers, board of directors, and other stakeholders"[4].

The concept of Corporate Governance has gained prominence following the Asian Economic crisis of late 1970s and in the Indian context, in the wake of economic liberalization and globalization, compelling policymakers and corporate executives to become more cognizant about the significance of a robust corporate governance structure.

In the words of J. Wolfensohn, Former President, World Bank, '*Corporate governance is about promoting corporate fairness, transparency and accountability'*.[5] In recent times, this principle has gained greater significance due to the series of scams including the Satyam Scam, Harshad Mehta Scam, Kingfisher Airlines Scam (Vijay Mallaya), etc. which have prompted the country, courts and authorities to formulate a governance process for the companies to secure the interests of public and other stakeholders involved.

[3] R.A.G. Monks & N. Minow, Corporate Governance 2 (Blackwell Publishing, 1995)
[4] F.A. Gul & J.S.L. Tsui, Introduction and Overview in The Governance of East Asian Corporations: Post Asian Financial Crisis 3 (Palgrave Macmillan, 2004).
[5] Yashodhara Shroff and Ors v. Union of India and Ors, ILR 2019 Karnataka 3768

Until 1990s, there were systemic flaws in the corporate governance mechanism, with the board of directors functioning without sufficient fiduciary duties, existence of inadequate disclosure standards and lack of transparency, due to which there was a pressing need for corporate reforms and the requirement for better governance was realised. Further, the 1991 fiscal crisis and the subsequent necessity to approach International Monetary Fund, prompted the Indian Government to take reformative steps to restore economic stability.

During the mid-1990s, the Government of India, launched some of its major initiatives on corporate governance:

(i) In 1998, the Chamber of Indian Industries gave the Fundamental Code for Corporate Administration, commonly known as the 'Desirable Corporate Governance'. It defined corporate governance as a practise which manages laws, methods, practices, and principles that decide an organisation's capacity to make administrative choices.[6]

(ii) In 1999, another initiative was taken up by Security and Exchange Board of India ("**SEBI**") and a committee under the Chairmanship of Mr. Kumar Mangalam Birla was formed. The primary purpose of this committee was to promote better governance in the corporate world. The committee recommended that all companies must be required to prepare a report outlining the actions and steps taken by the company to comply with the recommendations of the committee. The annual report published by the companies would help the shareholders to know about the company they have invested in. It thereby promoted accountability transparency, and equality of treatment for all stakeholders. [7]

(iii) The Government formed a committee under the chairmanship of J.J. Irani in December 2004 to give advisory opinion to the government on the amendment in the Companies Act, 1956. Later, in 2008, India witnessed one of the biggest corporate frauds named the 'Satyam Scam'. This scam was a result of non-fulfilment of the company's obligation towards its shareholders and other stakeholders. After the scam, the Government, and the Confederation of Indian Industry ("**CII**") examined the issues and reasons behind inefficiency of corporate governance in the country. It established several committees and task forces to reform and give recommendations for the formulation of an effective mechanism. This scam served as a catalyst to bring a more effective mechanism to

[6] Evolution of Corporate Governance in India, (2019) PL (CL) November 69
[7] Kumar Mangalam Birla Committee Report on Corporate Governance

determine the company's accountability, implement disclosure to maintain transparency and enforcement of rules.

(iv) After a series of discussions and brainstorming, the Companies Act, 1956 was replaced by the Companies Act to ensure appropriate rules for good corporate governance/ and protect the interest of minority shareholders. Later, several other laws were passed *inter alia*: SEBI guidelines, standard listing agreement of stock exchanges and accounting standards issued by the Institute of Chartered Accountants of India ("**ICAI**") and secretarial standards issued by the Institute of Company Secretaries of India ("**ICSI**"), which together govern the legal framework on corporate governance.

RECENT TRENDS IN CORPORATE GOVERNANCE

The global economy has been with grappling with multiple challenges and uncertainties since 2020 with Covid-19 Pandemic being far from over, increasing supply chain constrains, Russia -Ukraine conflict, continued energy crisis, inflation, threat of global recission, etc., the ramifications of which will continue for quite some time in the forcible future. The businesses today are facing incessant challenges in relation to their preparedness for responding to the macroeconomics ambiguities, the need for enhanced transparency and responsibilities towards shareholders, retaining talent and development of human capital, efficient reporting, and board control mechanisms. Given the macroeconomic scenario prevailing in 2023, the infrastructure of corporate governance is required to be more streamlined specially in relation to structural allocation of responsibilities within the top management, assignment of funds, formulation of effective and inclusive governance policies and flow of information. The ongoing macroeconomic scenario also indicates that in 2023 corporate governance will likely be impacted by several unexpected events which would go beyond the typical issues like political activity, cybersecurity, and environment, social and governance. Instead, they represent a level of distinct ethical, financial, technical, legal, and public health problems that are positioned to have unexpected effects on business leadership.

The need for corporate governance arises due to separation of management from ownership. Section 9 of the Companies Act states that a company has a separate legal entity distinct from its members and confers it the power of perpetual succession, to hold and dispose the property, to enter into contracts, to sue and get sued. A company *per se* has a separate legal existence and a corporate personality distinct from its members. A company is known by its own name and has its own rights, duties, obligations, and liabilities. Therefore, there is a clear difference between the company and its members, this is commonly referred to as a corporate veil.

This takes us back to 1897 to the ***Salomon Case***, which laid down the principle of a company being a separate legal entity. In this case, Salomon was a sole trader who sold his business to Salomon Co. Ltd. (a co. incorporated by him). The business collapsed and the question before the court was whether Salomon would be personally liable to repay the creditors being the controller of the company. The case, on appeal, went to the House of Lords, where it was established that a company is a separate legal entity. Since, the company took debts from these creditors, Salomon being merely an agent of the company cannot be held personally liable for any debts incurred by the company. According to the principle of independent corporate existence and separate legal entity, there exists a veil between the company and the public. The backbone of the company is based on the principle of corporate veil.

However, this principle is not rigid and has certain exceptions. The court can lift the corporate veil if the person is able to show that the company is nothing but a front for the directors/shareholders and that the corporate character has been employed as a camouflage for the purpose of committing illegalities or for defrauding the public, in which event, the courts can ignore the corporate character to look at the reality behind the corporate veil and make the directors and shareholders, personally liable for the amount due from the company to the creditors.

The Hon'ble Supreme Court of India in the case of, *Tata Engineering and Locomotive Co. Limited v. State of Bihar and Others*,[8] stated that, "*Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But it would not be possible to evolve a rational, consistent, and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation*."

This effectively meant that the distinct legal entity of a company can be ignored through statutory action and judicial discretion when there is a possibility of an intentional or potential injustice to a party (either internal or external to the corporation) with whom the company is dealing.

PIERCING OF THE CORPORATE VEIL TO ENSURE GOOD CORPORATE GOVERNANCE

The principle of lifting of a corporate veil is one of the most widely used doctrines in corporate law, in cases where the liability or obligation must be imposed on the shareholders. This means

[8] Tata Engineering and Locomotive Co. Limited v. State of Bihar and Others, AIR 1965 SC 40

that this particular doctrine to impose liability comes into the picture when a person, accountable for company's operations and functioning, indulges in an unreasonable behaviour, criminal activity or acts beyond the scope of its power or the articles of the company. In such a situation, the separate existence of a company is often ignored to determine the actual perpetrator. For example, it is not possible for the courts to determine liability in cases of torts or crime without disregarding the distinct legal person principle, as it is essential to evaluate the malicious intention of the stakeholders, acting on behalf of the company.

From the above discussion, it can be understood that though a company is a separate legal entity from its subscribers, in exceptional cases, this corporate veil can be pierced or lifted to protect the interest of the public and the shareholders. The court is empowered to hold the offenders liable, especially under different statutory provisions and judicial interpretations.

STATUTORY / LEGISLATIVE PROVISIONS

There is no exhaustive list to determine when the court can lift the corporate veil on statutory grounds rather there are certain provision in the Companies Act that prescribe when the court or central government can investigate in the matters of the company.

In the case *of Life Insurance Corporation of India v. Escorts Limited and Others*[9], the Supreme Court held that the court could lift the corporate veil when it is permitted by legislation, when improper conduct or fraud is to be averted, when a tax statute is circumvented or when related entities are intimately associated and, in actuality, part of one concern. It is neither required nor preferable to list the types of cases in which piercing the veil is acceptable, because this would inevitably depend upon the legislation, its object, the alleged conduct, impact on parties who may be affected, the public interest element, etc. Further in the case of *Cotton Corporation of India Ltd. v. G.C. Odusumath*[10], the Karnataka High Court held that the corporate veil can be pierced when the action so committed is expressly mentioned in the statute book or if there are compelling reason to lift the veil.

In this context, following are the statutory provisions pursuant to which the corporate veil can be pierced:

1. Wrongful and misleading statement in the prospectus

[9] Life Insurance Corporation of India v. Escorts Ltd., AIR 1986 SC 1370.
[10] Cotton Corporation of India Ltd. v. G.C. Odusumath, ILR 1998 KARNATAKA 2553.

The corporate veil can be lifted when the company gives misleading statement in the prospectus (pursuant to Section 26 of the Companies Act). The prospectus holds crucial information regarding shares, debentures, directors, and vision of the company. Sections 34 and 35 of the Companies Act deal with the criminal and civil liability, respectively, for making such misleading statements in the prospectus, such as statements likely to jeopardize the interest of the public and concerned parties.

2. **Failure to refund the application expense**

A company is liable to pay fine for non-payment of application money. As per the Companies Act, when shares are issued to public and the company fails to allot the shares, they are liable to refund the amount. Section 39(3) of the Companies Act imposes the penalty on failure to refund the application money.

3. **Fraudulently inducing others to invest in a company**

In case any person, misleadingly and deliberately conceals material facts and induces someone to acquire, dispose or subscribe a security, or offers to enter into an agreement to assure profits, on the basis of return of securities or on the advances in the values of the securities or offers to enter into an agreement to obtain credit from any banking or financial institution, the corporate veil may be ignored under Section 36 of the Companies Act, and lifted to determine the parties involved and the court can hold them liable under Section 447 of the Companies Act i.e., penalty for furnishing false information.

4. **Fraudulent transaction and unlawful activity at the time of winding up of a company**

If at the time of winding up of a company, it is found that the name of the company is used for misrepresentation and the company is involved in any unlawful and fraudulent activity, in such case Section 339 of the Companies Act empowers the National Company Law Tribunal to lift the corporate veil and make the person liable for the same.

LEGISLATIVE APPROACH DURING THE COVID PERIOD

Since the outbreak of Covid-19 Pandemic in 2020, many companies found themselves exposed to numerous challenges relating to their corporate government practices. The impact of the outbreak on implementation of corporate governance policies has been severe and globally the companies were unable to fully comply with the various legal and regulatory requirements pertaining to corporate governance. To ease the burden, the Ministry of Corporate Affairs, Government of India ("**Ministry of Corporate Affairs**") *inter alia* permitted /the companies to take all under decisions, requiring approval of the shareholders through voting via postal ballot or e-voting by dispensing with the requirement of holding a general meeting[11]. Further the Ministry of Corporate Affairs also provided the procedure for conducting extra ordinary general meetings through video conferencing or other audio-visual means such as the requirement of a clear disclosure with respect to accessing and participating in the meeting, providing two-way teleconferencing[12] was satisfied. The Ministry of Corporate Affairs also extended the above facilities to annual general meetings of companies to be conducted during the calendar year 2020[13].

JUDICIAL PIERCING OF THE CORPORATE VEIL

In general, the courts in India have upheld the validity of the shield between the company and its members and time and again reiterated that the identity of a company is separate from that of its shareholders and that the company itself being a juristic person, is responsible for its acts and omissions. However, in certain circumstances, the courts have disregarded this separation and pierced the corporate veil to determine the true character of the transaction being pursued under the name of the corporation. The law prevents some of these circumstances to arise in the first place through directives or restrictive statutory provisions, however, the judicial recourse is resorted in situations in which the legislations did not reasonably foresee such circumstances. Thus, in such scenarios, the judiciary must look beyond the standard rulebook for befitting circumstances where the corporate veil should be lifted.

A few of the circumstances under which the courts have pierced / lifted the corporate veil has been discussed below:

1. Anticipation of Fraudulent or Improper Conduct

Fraud or improper conduct is one of the most common grounds, where the judiciary has pierced into the corporate veil. At any point during the proceedings, the court may lift the corporate veil if it determines that the company's members are engaging in fraudulent or

[11] Circular No.14/ 2020 dated 8 April 2020 issued by the Ministry of Corporate Affairs, Government of India
[12] Circular No.17/ 2020 dated 13 April 2020 issued by the Ministry of Corporate Affairs, Government of India
[13] Circular No.20/ 2020 dated 5 May 2020 issued by the Ministry of Corporate Affairs, Government of India

improper activity and misrepresenting the legitimate claims of the aggrieved by hiding behind the corporate façade.

In the case of *Delhi Development Authority v. Skipper Construction Company Private Limited. and Ors*.,[14] the Delhi Development Authority ("**DDA**") and Skipper Construction Company Private Limited had signed a deal for erecting a building on a plot of land. Later, DDA had to ultimately direct the company to discontinue with the work and turn the land over to DDA. However, the company had already accepted a variety of payments from parties who agreed to purchase the space, and in some cases, it had even sold the same area to more than one person despite various orders of the courts to restrain the company from dealing in anything pertaining to the land in dispute. The court held that the accused and his family members defrauded people and after considering the facts of the case, the Hon'ble Supreme Court of India lifted the corporate veil. In this instant case the Hon'ble Supreme Court of India primarily relied upon the decision in the ***Salomon Case**,* wherein the House of Lords had recognised that the principle of separate corporate identity of a company is subject to several exceptions; two of them being '*when the corporate personality is being blatantly used as a cloak for fraud or improper conduct*' and where the '*protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law*.' Further, the Hon'ble Supreme Court of India in its order had also quoted American Professor L. Maurice Wormser who examined the decisions of American Courts and summarised the principle of lifting the corporate veil as follows: "*When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and doing, men and women shareholders, and will do justice between real persons.*" After consideration of Palmer's Company Law and various other decisions, the Hon'ble Supreme Court of India held that where the members of the company engage in a criminal activity or mislead the public, the court would disregard the corporate character and look at the reality hidden behind the corporate veil where the corporate character is used to conduct crime or to defraud others in order to be able to make decisions that will be in the best interests of the parties involved.

Furthermore, the Delhi High Court also lifted the corporate veil in a recent case of *OIS Advanced Technology Pvt. Ltd. v. State of NCT of Delhi*,[15] where the accused incorporated a shell

[14] Delhi Development Authority v Skipper Construction Company Pvt. Ltd. 1985 (1) S.C.R.598.
[15] OIS Advanced Technology Pvt. Ltd. v. State of NCT of Delhi, Rev. P. (Crl.) No. 536/2017

company having 90% shareholding (along with 10% shareholding with his wife) and purchased or transferred all the properties in the name said company. Thereafter, the accused left the country. The court, after piercing the veil identified that the accused is exercising real control over the company and imposed liability under Sections 82 and 83 of the Code of Criminal Procedure, 1973 on the accused. The court attached the properties of the company for execution of liability against the accused treating the company and the accused as the same personality.

In the recent case of *OCM Singapore, Njord Holdings Hardrada Pte. Ltd. and Ors. Vs. Prerit Goel and Ors*.[16], the defendant had indulged in fraudulent activities causing financial losses to the plaintiff. The defendant company was registered in United Arab Emirates. It was contented by the defendant that the corporate veil cannot be pierced by the Indian court as it is registered in United Arab Emirates. The court held that there is no merit in the submission as this would indicate that an entity can do all kinds of fraudulent activity in India and will not be implicated for the same. The Delhi High Court held that if the perpetrators are located within the jurisdiction of the court and it is proved that the fraud is committed, the court will have the jurisdiction to lift the corporate veil of the entity.

Importantly, it shall be pertinent to note that if any assertion regarding fraud is made it is necessary that the party asserting the same proves it unequivocally. The court restrains itself from lifting the corporate veil until it is proved that the concept of corporate personality is misused and is used to defraud others. Similarly in the recent case of *Great India Estate Pvt. Ltd. Vs. Union Bank of India and Ors*.[17], the High Court of Kerala determined that the corporate veil can be lifted by the state and the private bodies can resort to lifting the corporate veil only through court of law and it should be proved that the party has intended to commit the fraud. In the instant case the veil was not lifted as there was no material available on record, other than the fact that the two directors of the Company are directors in the other Company also and that they have deep and pervasive control over the company.

2. <u>Prevention of Tax Evasion</u>

[16] OCM Singapore Njord Holdings Hardrada Pte Ltd and Ors. vs. Prerit Goel and Ors. 2022 SCC OnLine Del 1352
[17] Great India Estate Pvt. Ltd. Vs. Union Bank of India and Ors.; 2022 SCC OnLine Ker 1382

A corporation's corporate status is frequently used as a means of avoiding payment of taxes and other fees that the businesses would ordinarily be required to pay by law. In such circumstances, Indian courts have frequently pierced the corporate veil to determine whether the company's distinct legal existence was being utilised as a method of evading taxes and revenue duties.

An unmistakeable and apt case for tax evasion is the case of *Sir Dinshaw Maneckjee Petit*[18] where an affluent man, Sir Dinshaw, formed four companies and invested his money in those companies to avoid taxes. He was taking money from these companies as loans and simultaneously earning tax benefits on this amount as an imaginary advance. The court found this to be a case where determination of who is behind the curtain of these companies was of paramount importance and subsequently lifted the corporate veil.

Further, in the case of *Commissioner of Income Tax v. Sri Meenakshi Mills Ltd.*[19], the accused held 98% (ninety eight percent) shares in a bank where the proceed of their sales were transferred to one branch. The accused companies took loan from the other branch of the bank and the loan amount was higher than the profits from the shares. The court observed that the former branch was incorporated in a non-taxable territory and was only handling the proceeds by the shareholder's company. The Hon'ble Supreme Court of India held that the court is entitled to lift the veil of corporate entity to consider the economic realities behind the legal façade and has the power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligation.

Moreover, in the case *Vodafone International Holdings B.V. v. Union of India & Anr.*[20], Vodafone International Holdings B.V acquired CGP Investments (Holdings) Ltd. ("**CGP Investments**"), which was controlled by a Hong-Kong based company named Hutchison Essar Ltd. ("**Hutchison**"). CGP Investments held majority shares in the Indian subsidiary of Hutchison. The Hon'ble Supreme Court pierced the corporate veil and observed that this transaction is indirectly been performed to evade taxes. The court stated that "*the corporate veil can be lifted when a company engages in an indirect transfer by abusing the legal form of the company without reasonable business purpose and where the transaction is used principally as a colorable device for the distribution of earnings, profits and gains to evade tax obligations.*" The case of *Richter*

[18] Maneckjee Petit, Re, AIR 1927, Bom. 371.
[19] CIT v. Sri Meenakshi Mills Ltd., AIR 1967 SC 819
[20] Vodafone International Holdings B.V. v. Union of India, (2012) 6 Supreme Court Cases 613

Holding Ltd. v. The Assistant Director of Income Tax,[21] is on similar lines of the *Vodafone case* (*supra*). In this case, Richeter Holding Ltd., a Mauritian company, purchased all the shares of the UK based company, Finsider International Co. Ltd., holding majority shareholdings in an Indian company, Sea Goa Ltd. In order to ascertain the true nature of the transaction, the Karnataka High Court lifted the corporate veil and observed that this was an indirect transaction to avoid tax for the payment of purchase of capital asset, hence, the accused was liable to pay the taxes.

3. Binding the Companies to Follow Welfare Legislations and Public Interest

The courts often check whether the entities are established with an intention to violate welfare laws. In such circumstances, the courts lift the corporate veil and impose personal liability on the members. In the case of *Workmen Working in Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd*[22], dividends on the equity assets of the subsidiary were earned by the holding company. The holding company established its own distinct wholly owned subsidiary and transferred the entire dividend income to the newly established subsidiary and the aforementioned profit was added to the company's profits when calculating the employees' compensation under the Allocation of Incentive Act, 1965. As a result, the income that employees could use to receive compensation decreased, which decreased the number of employee incentives. The Hon'ble Supreme Court of India lifted the corporate veil and observed that the new company, not performing any independent function, was incorporated solely for minimizing the gross profit of the principal company.

Furthermore, in *State of Rajasthan and Ors. v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and Ors*[23], the corporate entity was used to split the real transaction, i.e., the sale of the entire shareholding to another company into two transactions. The first was the conversion of the partnership into a company and the second was the transfer of the mining lease to a third party for consideration without obtaining statutory consent. The actual transaction was the illicit sale of a mining lease. The Hon'ble Supreme Court of India invoked the corporate veil on the ground of public interest and observed that the corporate veil can be pierced if public interest warrants it. The Hon'ble Supreme Court of India cited the public

[21] Richter Holding Ltd. v. The Assistant Director of Income Tax 2011 SCC OnLine Kar 4459
[22] Workmen Employed in Associated Rubber Industries v Associated Rubber Industry Ltd AIR 1986 SC 1
[23] State of Rajasthan and Ors. v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and Ors (2016)4SCC469

interest justification for lifting the corporate veil and noted that the corporate veil can be broken if the public interest justifies it.

4. Identifying the True Character of the Parent-Subsidiary Companies

There are times when a corporation owns a controlling interest in another company and the two are integrated in such a way that they function as a single unit. The lifting of the corporate veil doctrine can be used in these situations by the courts to ascertain the true nature of the entities and assess if such a structure is being used as a front for inappropriate purposes. In the case *of State of UP v. Renusagar Power Co*. ("**Renusagar**")[24], where 100% ownership of Renusagar was held by Hindustan Aluminium Corporation Ltd. ("**Hindalco**") and the latter received energy from the state of Uttar Pradesh, the Hon'ble Supreme Court held that Hindalco and Renusagar should be recognized as a single entity by virtue of lifting of the corporate veil concept. As a result, the Hon'ble Supreme Court of India came to the judgement that Hindalco was using its own source of production to generate the energy it was using, and that the rates of duty applicable to that source should be charged to that consumption.

5. In case of Contempt of Court

In cases of intentional defiance of orders passed by the courts, it is understandable that the corporate veil must be pierced as a company being an artificial person cannot have an independent intention and needs its natural persons to take decisions on its behalf. Thus, in cases of willful defiance of the orders passed by the courts, it is necessary that the corporate veil be pierced so as to identify the decision makers for such defiance of the court orders. Further in the matter of *Jyoti Limited v. Kanwaljit Kaur Bhasin*[25], two partners in a company agreed to sell a property to others, but they later cancelled the deal. Following a legal dispute, the Delhi High Court forbade the firm from selling the property. Thereafter, the two partners formed a private business, after becoming the only two shareholders and the Chairman and Managing Director of the company, respectively, in the interim and transferred the property to it. The corporation sold off the property notwithstanding the Delhi High Court's order of restraint. The partners of the firm asserted in their response to the contempt proceedings that since the sale was made

[24] State of UP v. Renusagar Power Co (1988) 4 SCC 59
[25] Jyoti Limited v. Kanwaljit Kaur Bhasin, [1987] 62 Comp. Cas. 626 (Delhi).

by the corporation, the firm had not breached the court's order. The Delhi High Court pierced the corporate veil to ensure compliance with the court's orders.

CONCLUSION

In 2023, the global uncertainties are poised to continue, with persistent supply chain constrains, labour shortages, volatility in the market, economic show down, etc. In view of such uncertainties, an effective system of corporate governance is more important than ever to safeguard the corporates enduring viability and sustainability. Today, the businesses corporate governance policies need to streamline and adapt themselves with evolving times in terms of management, marketing, human resource, cyber security, environment, social and governance in addition to the traditional benchmarks of legal, compliance, risk, audit, and finance.

Effective and efficient corporate governance policies balance the transparency, accountability and profitability of a company and keep a check on arbitrary actions of the individual stakeholders of the company for the benefits of all the stakeholders in the company at large. It is an established principal of law that the identity of a company is separate from that of its stakeholders and the company being an artificial entity conducts its business, administration, operation and functions through its directors, officials, and other stakeholders. To protect the interests of all stakeholders it is of paramount importance that the distinction and boundaries between the identity of the company and that of its stakeholders remain intact unless there is an overriding requirement to pierce the corporate veil.

The doctrine of piercing the corporate veil has augmented the legal jurisprudence by fostering good governance of companies in India with the intention of safeguarding the interests of all the stakeholders. Separate legal personality of the companies is the rule and lifting the corporate veil is an exception as understood in today's realm. The Hon'ble Supreme Court of India has time and again reiterated that the courts must resist the temptations to lift the corporate veil, which may be pierced only in exceptional cases where it is clear that the company is a sham or a camouflage to evade liabilities by the company owners.[26] Further, a court can also lift the veil when there are compelling reasons involved, as prescribed through judicial precedents, to punish the individuals responsible for not abiding with good corporate governance rules.

[26] Balwant Rai Saluja v. Air India, AIR 2015 SC 375.

The judiciary has time and again shown considerable restraint when it comes to piercing of the corporate veil until it is required for the purpose of equity, fairness, and justice. Further, the Allahabad High Court in the matter of *Rakesh Mahajan v. State of U.P. and Others*[27], has reiterated the following six principles laid down for the purpose of piercing of the corporate veil as formulated by *Munby J. in Ben Hashem v. Ali Shayif* [28], *"(i) ownership and control of a company were not enough to justify piercing the corporate veil; (ii) the Court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice; (iii) the corporate veil can be pierced only if there is some impropriety; (iv) the impropriety in question must be linked to the use of the company structure to avoid or conceal liability; (v) to justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and (vi) the company may be a "façade' even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done."* The principles laid down in the matter of *Ben Hashem v. Ali Shayif* (*supra)* to a large extent can be considered as the guidelines for the purpose of piercing of the corporate veil.

Piercing of corporate veil helps in identifying the true members who are controlling and steering a company and impedes them from hiding behind the curtain of the corporate veil for their unethical conduct. In current times, though judiciary has given principles and instances when the corporate veil can be lifted but for smooth functioning of the company and to secure the interest of the stakeholders, there is a need for a comprehensive and exhaustive framework in the Companies Act to determine the instances when the corporate veil may be pierced.

In the coming years, businesses must be mindful of and keep up with the latest trends and developments shaping corporate governance policies such as risk management, technological innovations, cyber security, crypto currency and blockchain, environment, social and governance, climatic concerns, use of renewables and natural resources and board diversity etc. How the companies perform on these critical parameters will be crucial determinants for their sustainable future. Hence, a constant vigil over the acts and omissions of the businesses and their operation behind the corporate veil is imperative to protect the interest of the stakeholders and increase transparency, sustainability, accountability, and governance.

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[27] Rakesh Mahajan v. State of U.P. and Others 2019 SCC OnLine All 4766
[28] Ben Hashem v. Ali Shayif [2008] EWHC 2380 (Fam)