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Lifting of Corporate Veil

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ABSTRACT: The incorporation veil theory is a legal term that distinguishes the identity of a company from the identities of its owners and prevents them from being individually responsible for the debts and other liabilities of the company. Although a corporation is a distinct legal body, it is not possible to ignore the fact that it can only operate through the individual agents that make it up. Because an artificial human is unable to do something criminal or dishonest, it may be appropriate to strip the corporate personality façade to recognize the people who are really guilty. This is known as corporate curtain raising. In addition to the legislative guidelines for raising the corporate curtain, courts often raise the corporate veil to see the current state of affairs. However, while the legislature and the courts have now permitted the corporate veil to be removed in certain cases, it should be remembered that the concept of the incorporation veil is still the norm and the exceptions to this rule are the instances of raising or piercing the veil.

KEYWORDS: Company Law; Corporate Veil.

INTRODUCTION

It is appropriate to describe what the essence of a corporation is when coping with the raising of the corporate curtain. Strictly speaking, a corporation does not have a clear description, but section 3(1)(i) of the Companies Act seeks to include, in the sense of the regulations and for the use of that act, the interpretation of the term. It states:' a corporation is a company founded and registered under this Act or an existing company as described in section 3(1)(ii).' For it to become an incorporated organization, the company must be registered under the Companies Act. It becomes an illegitimate organization if it is not licensed. This paper will deal with the removal of the corporate curtain and with court rulings on its facets. Let us first address the precise definition of the corporate veil and the limited liability principle of the raising of the corporate veil[1].

A legal principle that distinguishes a corporation's identity from its owners' identities and prevents them from being individually responsible for the debts and other liabilities of the company[1].

Often it will happen when the company's corporate personality is used to conduct theft and actions that are improper or unlawful. Because an artificial human is unable to do something criminal or dishonest, it may be appropriate to strip the corporate personality façade to recognize the people who are really guilty. This is known as 'Corporate Veil Raising[2]'.

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It applies to the case where, notwithstanding the concept of limited liability and/or independent identity, a shareholder is held responsible for the debts of his company. When owners blur the distinction between the company and the shareholders, the veil doctrine is cited. And by human agents who make things up will a business or entity function. As a result, there are two primary ways in which a corporation becomes responsible in company or corporate law: firstly, by actual liability (for direct infringement) and secondly by secondary liability (for acts of its human agents acting in the course of their employment)[4].

The lifting of the corporate curtain is based on two current hypotheses. The first is the theory of the "alter-ego" or other selves, and the other is the theory of "instrumentality." The alter-ego theory takes into account whether the boundaries between the company and its owners are distinctive in nature[5].

Lifting the company refers to the prospect of searching behind the structure of the company (or behind the distinct identity of the company) to keep the participants responsible, as an exception to the rule that they are normally covered by the corporate cover (i.e. they are normally not liable to outsiders at all either as principles or as agents or in any other guise, and are already normally liable to pay the company what they agreed to pay by way of share purchase price or guarantee, nothing more)[5].

DISCUSSION

When a corporation is incorporated under the rules set down in the 2013 Companies Act, it becomes a separate legal body. Unlike a partnership corporation that has no identity of its own, an incorporated corporation has a distinct legal identity of its own and is independent of its owners and its members. This essay will go into what this distinction suggests, why this demarcation was established, and how participants may be individually responsible for using the organization for negative reasons as a vehicle[6].

A corporation is made up of its shareholders and is controlled by its Board of Directors and its staff. When the corporation is incorporated, the status of being a distinct legal body that distinguishes the status of the company and the members or owners it is composed of is given. This principle of distinction is known as the Organizational Curtain, and is also known as the 'Incorporation Veil'[6].

The benefits of forming a corporation such as Perpetual Succession, Transferable Shares, Capacity to Sue, Independence, Limited Liability and eventually being given the title of a Distinct Legal Body to the company are by no means inconsiderable, in no conditions can these benefits be ignored and, in reality, the drawbacks are very few relative to them[6].

To a certain degree, associations operate to protect the private capital of owners or lenders from individual responsibility for a company's commitments or operations. Almost unlike a sole proprietorship under which the proprietor might be assumed to be in charge of the organization's vast number of responsibilities, a corporation typically restricted the investors' individual risk. This is why Limited Liability is so common as a term[7].

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Puncturing the Curtain of Incorporation usually fits well for smaller private partnerships in which the firm has little members, fewer capital, and acceptance of the partnership's separateness from its investors[7].

There are not a few cases where the courts have defied the temptation to crack the Corporate Curtain. But it is not feasible to drive the idea to unnatural limits. There must be conditions that require the court to classify a corporation with its judges. For example, a corporation cannot be accused of plotting with its sole director. In addition to legislative procedures for raising the corporate curtain, courts often raise the corporate veil to see the actual situation[8].

An entity may be considered as an operator or trustee of its people or of another organization for some time and may, consequently, be treated as having lost its distinction for its leader. In India, this investigation has periodically appeared about Governmental organizations. Under the Corporations Act with the president and a few separate officials as investors, numerous privately held firms for corporate reasons have been enrolled[8].

The undeniable preferred position in framing an administration agency is that it offers the State's exercises "a little bit of the opportunity that private partnerships appreciated and the legislature got away from the norms that hampered activity when it was completed by an administration division rather than an administration company." At the end of the day, the administration component of the individual's robes was given[8].

The business has faced numerous incidents of corporate bribery, insider trading and other activities banned under the law per se and which also impact the functioning of the corporate world with the growing economy and developments in the corporate sector. The idea of "corporate veil lifting" plays a critical role in finding the culprit behind the company's criminal activities[8].

While the term has entered into effect with the implementation of the act, it can still not be treated as comprehensive. In his attempt to describe the term corporation, Lord Justice Lindley envisaged that "company is an association of many individuals who contribute money or money's worth to a common stock and employ it in some trade or business, and who share profit and share from it." In simpler terms, a company can be expressed as an association of individuals who own an independent legal body. It requires legal life and is regarded in the eyes of law as an artificial person or as a juristic person[9].

It is important to study the word "company" and its essential characteristics before delving into the idea of lifting the corporate veil. The business is defined under Section 2(20) of the Companies Act, 2013 ('the Act'), which articulates the word company as any company formed under this Act or any other previous company law[9].

Via the available opinions and literature in this respect, it can be deduced that the corporation is a distinct legal body, although it is governed by its board of directors. It should be remembered that this theory was followed and developed for the first time in the matter of Solomon v. Solomon ('Solomon'), which further cemented the twin limited liability scheme and the distinct organization in English law[9].

Subsequently, in the celebrated Rustom Cavasjee Cooper v. Union of India decision, the same was observed by the Hon'ble Supreme Court of India, in which the court held that a corporation is a separate legal body apart from its individual members and that even the interest of a company is not the property of its members or owners. The biggest challenge occurs when the individual running the company's business uses the company's name to perform unethical actions[10].

The fact that the organization and not the members are responsible establishes a wall between the members and third parties, but this corporate veil is often pierced to make the actual culprit accountable. This is generally known as corporate veil raising or piercing. Corporate veil piercing exists as a check on the independent legal entity's ideology. The veil is usually used for the participants who commit criminal activities and take cover of the veil later on. The corporate curtain is then lifted or pierced in such a case[10].

CONCLUSION & IMPLICATION

It should be remembered that the Salomon v. A. Regulation About Salomon and Co. Ltd. is now the norm, and the exceptions to this standard are the openings to pierce the curtain. The law that a corporation has its own distinct legal character finds a prominent place in India's Constitution as well. Article 21 of the Constitution of India states that, with the exception of the process laid down by statute, no person shall be deprived his or her life and individual liberty.

Under Article 21, as an entity, a corporation still has the chance of life and individual liberty. This was founded on the grounds of Chiranjitlal Chaudhary v. Association of India, where the Supreme Court held that fundamental rights granted by the Constitution are open not only to individual indigenous citizens, but also to corporate bodies.

In these lines, in spite of the fact that the partnership is made up by and maintained by people, moving on as owners of the business, an entity can own and sell land, sue or be sued, or carry out a criminal offence. It is under the 'firm's mark' that misrepresentation is submitted by persons or owners.

It is obviously clear that the incorporation of the company at all occasions and under all cases does not close off personal responsibility. A separate corporate entity's sanctity is maintained only to the degree that the entity is compatible with the fundamental policies that gave it life.

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