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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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PARDEY MEIN REHNE DO PARDA NA UTHAO

AUTHORED BY - TARUSHI KAPOOR

Abstract

Corporate veil has always been a topic of controversy and a concept purely based on interpretation. Lifting of corporate veil is expected only at the times of extreme necessity and is otherwise considered very sacred hence should remain untouched. However, it is important to also understand that its not that lifting of the veil is the only option; there exists various other ways through which one can without the lifting of the veil also one can reach to a conclusion by ignoring the concept of separate legal entity. This paper aims to understand the different methods as to how the courts can conclude based on the facts and circumstances and without breaching the ideals of a company

Introduction

In the world today, countries focus mainly on how to encourage the youth into formulation of companies which will be an ultimate source of innovation, development and economic growth. The need and importance of companies was something that was understood way before and laws in order to regulate it were brought ever since. A company or companies given are distinction from other forms in which business is conducted; the distinction is that of 'Separate legal entity.' A company has the power of conducting business without necessarily having its identity merged with the people in it. It is an artificial person, who signs contracts, enters into deal, owns property and has a liability of its own and isn't relying on anyone else. Having understood this, the next pertinent question is whether there is the very need for piercing this wall of distinction that exists amongst the company and its members, if yes then is piercing the only option one has or there are other methods through which courts can take to lift the veil and reach a sound decision? This paper aims to find out questions regarding the different ways in which the wall of distinction can be moulded and analyse the different cases, which had set precedents, could have applied these methods in their understanding or not.

What Is A Corporate Veil?

As the name suggests a corporate veil, is a veil between the company and its members. It is a protective shield that avoids the members of the corporation from being held liable for the actions taken up by the company. This tends to provide the shareholders the confidence to then commit to the limited capital and assurance that they will not have personal liability for the corporation's debts.¹ But there have been instances where people tend to misuse this shield in order to get something in return. This includes fraud, misrepresentation by creating shell companies, in order to evade taxes or sometimes to just to protect themselves from debt. In these cases the court makes it clear that corporate veil can be lifted and the whole idea of separate legal entity between the members and the company is merged into the same entity. This is done in order to respect and protect the interest of general public and to set an example that judiciary is competent enough to bring in the exception in the characteristic of the company – 'Separate legal entity,' and see the two entities as one, if it is meant for a greater public cause.²

However, the question that might arise in one's mind is whether piercing or lifting is the only way by which a conflict of such level can be solved or are there other methods in which the corporate veil isn't entirely pierced and yet helps us to come to conclusion of who is liable and who is not?

The Different Categories Which Reflect Differences in 'Lifting the Corporate Veil'

Apart from penetrating or piercing the corporate veil, the different categories also include how one can 'Peep' behind the veil, 'Extend' the veil or 'Ignore' the veil.

1. Peeping behind the Veil: This doctrine is used to just get a little information regarding the matters related to who are the shareholders, what is their respective shareholding, their relationship in regards with the company. Once all this data is collected the Veil is pulled down again and the company's entity is retained. It's almost like a child peeping through the wall in the game of hide and seek, out of curiosity to see his chances of being caught. This doctrine finds its roots from 'Curiosity.'

¹ Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036 (1990- 1991).

² Rishi Pandey, 'Lifting Or Piercing Of Corporate Veil' (LiveLaw, 15 December 2022)

<<https://www.livelaw.in/know-the-law/lifting-or-piercing-of-corporate-veil-216786?infinitemscroll=1>> accessed 26 September 2023.

2. Piercing the veil: This is the most used doctrine, in order to meet justice, especially when there is an obvious responsibility on the shareholders of the company and to hold them liable personally as well as to stop them from using the garb of the veil to hide under the shadows of 'Separate Legal Entity.' This is more operative and intense as compared to Peeping, because this involves in lifting the corporate veil hence changing something of much importance and hence, it is always advised to use it utmost safety and caution.
3. Extending the veil: Extension of the veil is done in order to take under it a bunch of companies, instead to referring and filing a case separately provided that they are conducting the same activity. Each corporate entity is not of concern any more: it is 'the enterprise entity' on which the focus is.
4. Ignoring the veil: The extreme way of dealing with the veil, by completely ignoring it because the courts immediately know the company wasn't made for any commercial reason and simply was meant to defraud or sham.³

Analysis of Precedents Which Could Have Taken a Different Route:

One of the most common methods of lifting the veil is by *piercing* it. Here the character of limited liability of the company is aside and hold the shareholders or directors personally liable for the Corporates actions or debts.⁴ To explain and understand this better, one may refer to the case of *Daimler co. ltd. v. Continental Tyre Rubber Co. ltd.*⁵ The case brings in the interesting concept of what happens when there exists war like conditions.

Continental Tyre Rubber was incorporated in Britain, but all except one shareholders of the company were Germans. They entered into a contract with Daimler, who later refused to pay as a war broke out between Britain and Germany; and he didn't want to pay an enemy.

Here the courts were very clear about the fact that company can acquire the enemy nature, especially at the times of war and most of the shareholders were Germans, therefore they also relied on this fact. So, when you are targeting the company through its shareholders it requires piercing of corporate

³ S Ottolenghi 'From Peeping behind the Corporate Veil, to Ignoring It Completely' The Modern Law Review, vol. 53, no. 3, 1990, pp. 338–53 <JSTOR, <http://www.jstor.org/stable/1096475>> accessed 30 September 2023

⁴ 'Piercing the corporate veil' Legal Information Institute (Cornell Law School)

⁵ Daimler Company v. Continental Tyre and Rubber Company (1916) 2 A.C. 307

veil, which was adopted in this case.

The cases of understanding piercing is quite widely available, its one the most elaborate ways in which one lifts the veil. But there exists different ways of moulding the veil, which will be looked at in detail:

As discussed above, there have been times when courts could have or actually have relied on various ways in which a corporate veil can be behaved with in order to reach to a justiciable conclusions.

Following this, is the case '*Prest v. Petrodel*,' which is understood as a classic case that deals with the doctrine of piercing the veil of the company. The case is about a married couple, who eventually decided to divorce. Mr. Prest was ordered to pay a large chunk of money as per the proceedings, to the wife, who subsequently enforced this against the Petrodel group in which Mr. Prest had owned assets. The case takes a 'company law' turn when it is argued that the properties can't be given to Mrs. Prest as they belonged to the company, and as company and its owners are firmly divided with a veil, it shall remain respected. The Supreme Court also went along with this understanding stating that veil should only be pierced in certain circumstances, which could not have been established in this circumstance. However, the question that arises here is that, if piercing is a rare event, can there be any other way in which one could have interpreted the veil?

This could have been solved using the principle of '*Peeping round the Veil*,' which was also reasoned in Lord Sumption's judgment that, once you peep round the wall, you are not only keeping the wall intact, but also meeting a justifiable end. Peeping round the veil can be understood to be the way in which the corporate veil is just lifted to the extent of understanding of knowing who the shareholders are and the related information about them in connection with the company. In this case as well, it can analysed that the main aim of the judges was to make sure that people in general are very well aware of the fact that corporate veil is something that can be lifted only in special circumstances and is not something to meddled with on a day to day basis as it maintains the sanctity of the company. However, if one peeped behind the veil one would have noticed 2 things:

¹. Mr. Prest was the beneficial owner of the properties of the company, what adds on this is the

evidence of non-production of completion statements or any evidence regarding the money paid for the purchase. ‘This in turn suggests that proper disclosure of the facts would reveal them to have been held beneficially by the husband, as the wife has alleged.’⁶

2. The disputed properties were all acquired before Petrodel even started its operations, this could lead one to believe that the husband wanted to hold the title to himself, as the matrimonial home was held on trust for the husband and no rent was paid to PRL⁷ for the occupation of the home.

Therefore, had these transactions been seen through the peeping of the veil, it would have become obvious as to what Mr. Prest wanted to do while keeping the separate legal entity intact and probably could have in a justifiable manner come to a conclusion and also had maintained the notion of keeping the sanctity of piercing the veil limited to certain circumstances only.

Having understood how the doctrine of Peeping around the veil, the next aspect is the *Doctrine of Extending the Corporate Veil*. Extending the veil refers to bring the various companies together to be treated as a one single legal entity in order to avoid the other components that might come into picture and only the common activity driving the companies is taken into consideration by extension. The practice of extending the veil includes: holding affiliate transport companies liable in tort for damages caused by negligent conduct of one of them; treating the holding company as responsible for the acts of its subsidiary.⁸ In the case of *State of U.P v. Renusagar Power co. & ors*⁹, was the case dealing with a holding company and a subsidiary company. In this case company Hindalco established Renusagar to supply electrical power to Hindalco. Renusagar had its own chartered documents, but was wholly owned subsidiary of Hindalco. Section 3(4) of UP Electrical (Duty) Act which laid down the exemption from ‘Levying of Electricity duty’ was disallowed to Renusagar and it was demanded from them to pay the electricity duty on the electricity provided to Hindalco. Something that has been repeatedly emphasised is the importance of respecting the veil. Even in this case one of the arguments raised by the appellants was that the two companies are separate legal entities and the fact the Renusagar had its own chartered documents proves it more. This shows that the intention was to

⁶ Prest v Petrodel Resources Ltd & Others [2013] UKSC 34

⁷ Ibid.

⁸ Costan v Manila Electric Co., 24 F (2d) 383

⁹ State of U.P. & Ors v. Renusagar Power Co. & Ors. (1988) 4 SCC 59

maintain them as separate legal entity and hence the veil should be respected. However, being the 'own source of generation' courts believed it can be treated as one.

Though the courts had applied the lifted the veil between, the question raises is that - how were they able to do so? In this case, on analysing what Extending the corporate veil contains and the facts of the case, one can safely conclude that this doctrine would have been applied. The extension of veil in itself requires expanding and considering the parent company and subsidiary company as one, if the circumstances provide so - which in the case was to safeguard 'Public Welfare.' Hence the veil can be lifted by considering the company to be one entity in this case as:

- 1) Hindalco's sole supplier of power was Renusagar, which helped in expanding the aluminium production.
- 2) Hindalco completely owned and managed Renusagar their entirety.

Therefore, making it clear that the veil can be extended to the ambit of considering the two entities as one and hence that way both by the virtue of being the same unit can be exempted from paying taxes.

A similar case that could have been decided by taking a different view into consideration is the case of *Dinshaw Manakjee Petit*¹⁰ that is a case where the corporate veil instead of being pierced can, in its entirety, be very well ignored. In this case, there existed a rich man who received significant dividends and interest income. He agreed to work as agent, by holding a block of investment for four companies that he himself had formed. Income received was always credited, but the company would hand him back the money in the form of 'Loan,' this way his income was divided and hence used it to evade taxes.

It was prima facie evident that he was trying to create shell and sham companies. The courts very well understood that and considered this to be a good enough reason to pierce through the corporate veil and consider both entities as one in order to stop such an act. Where sham companies are being created for Tax evasion, it tends to also affect the public at large and thus this leads to courts taking such decisions in order to protect them.

¹⁰ In Re: Dinshaw Maneckjee Petit (1927) 29 BOMLR 447

On critically analysing the case, one can also apply the concept of what is called the *Doctrine of Ignoring the veil*. This is considered to be the most extreme method in which the veil is treated and hence totally disregards the existence of the veil. When such sham company cases come into picture, which have no commercial or operational function, it is considered to not even be an entity, but instead just a method of getting away with the scam. The idea of having a separate legal entity is, where the company runs its commercial function, with its objectives of meeting their goals as well the goals of the stakeholders of the company and are kept different from its shareholders, but in the cases of shell companies their existence is for and just for benefitting the scammers without even functioning and operating. And due to this the 'Corporate Veil' can be ignored entirely.

Following this understanding, in the case of Dinshaw, the whole idea was to evade taxes and subsequently for that he even came up with shell companies, thus the courts could have completely just ignored the corporate veil and very evidently not consider the company to exist at all.

Conclusion

Lifting the Veil is not only a regressive but also a process that should be taken place with caution so that they don't create any violence to the sanctity of a company. Cases from United Kingdom and United states have helped in shaping the idea of when the veil can be lifted and when it cannot. However, one must remember that it is not a straitjacket formula that can be applied everywhere, it is important to understand that circumstances matter a lot and based off those it is decided, keeping the 'Respect' of the veil in mind. The different ways of moulding a veil can sometimes also happen simultaneously where peeping, piercing, extending and ignoring can all take place at different stages over the course of the same case. These stages not only help in protecting the company or the shareholders, but more importantly the public in general, because as we said before, at the end of the companies are for growth and that only the public can decide for them, when they have faith in them.