Lifting of corporate veil

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Introduction

- A company is a legal person separate from its members.
- Hence, for any wrong committed by company it is punished being a legal person.
- But sometimes the independent corporate personality principle is misused by officials of company in order to commit fraud or other wrongful acts.
- Hence, the court is justified in ignoring the principle of independent corporate personality and to lift the veil of corporation in order to find out the actual official committing wrongful act.
- Lifting of corporate veil is one of the important disadvantages of incorporation.
Importance of the doctrine

- Doctrine of indoor management is in direct contrast to the doctrine of constructive notice. It protects an outsider from the company.

- In MRF Ltd. Vs. Manohar Parrikar (2010) 11 SCC 374, it was observed that according to the doctrine of indoor management persons dealing with the company are entitled to presume that the internal requirements prescribed in memorandum and articles of association must have been properly observed by the company.

- The doctrine of constructive notice on the other hand seeks to protect the company from outsiders dealing with the company.
Grounds of Lifting of corporate veil

- For determination of enemy character
- For detection of fraud
- For prevention of tax evasion
- Economic offences
- Illegal activities
Determination of enemy character

- In Daimler co. Ltd. vs. Continental Tyre & Rubber co. Ltd. (1916) 2 AC 307, a company was registered under English Companies Act. But as the war broke out between England and Germany, it became necessary to determine the true character of company.

- On piercing the corporate veil it was found that all the directors were German nationals & all the shareholders except one were Germans. Hence it was held that the company has assumed enemy character. It will be against public policy to have trade with an enemy.
Detection of fraud

- Sometimes the court is justified in lifting the corporate veil for detection of fraud.
- In Gilford Motor co. Vs. Horne 1933 Ch.935 (CA), the respondent was the employee of appellant company. He had given the undertaking that while in service or after his retirement or resignation, he will not start any business competing to that of company’s business. But after his retirement he started a business competing to the business of the company.
Prevention of tax evasion

- In re Dinshaw Petit AIR 1927 Bom.371, a rich businessman had floated four private companies only with the object of avoiding payment of taxes. On lifting the corporate veil it was found that these companies were practically not conducting any business and they were floated.

- In Vodafone International Holdings B.V. vs. Union of India & anoter (2012)6 SCC 613, the Sup. Ct. Observed that corporate veil may be lifted in the context of cross border transactions and tax avoidance.
Prevention of economic offences

- In case of economic offences, the Court is justified in lifting the corporate veil.
- In Santanu Roy vs. Union of India (2017), it was held that in case of economic offences the Court is entitled to lift the corporate veil and pay regard to economic realities behind the legal facade. In this case the company had violated section 11(a) of Central Excises and Salt Act, 1944.
Prevention of illegal acts

- One more important situation justifying lifting of corporate veil is prevention of illegal acts.

- In Delhi Development Authority vs Skipper Construction co. Ltd. (1995) 3 SCC 507, DDA had entered into a contract for construction on a plot of land. But as there was a prolonged delay, DDA wanted the piece of land back from Skipper company. However, on lifting the corporate veil, it was found that the company has already sold the said piece of land to two buyers. It was held that to prevent illegal act being committed, the court is justified in lifting the corporate veil.
Statutory grounds for lifting corporate veil

- Under Companies Act, 2013 there are various provisions which allow lifting of corporate veil:
  - Non compliance with conditions of incorporation
  - Misdescription of name
  - Fraudulent conduct of business
  - Holding and subsidiary companies.
Conclusion

- Thus mere incorporation doesn’t wipe away personal liability in all the circumstances.
- There are a number of circumstances laid down by the courts over a period of time and different statutory provisions which justify lifting of corporate veil and imposition of personal liability on officials of the company.
- Doctrine of lifting the corporate veil helps in identifying the actual person committing wrongful act by misusing the principle of independent corporate personality.
Reference Material

- Bare Act