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The Principle of Corporate Personality

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ABSTRACT

Corporate personality is a commercial legal device kept forward by the companies act. It is the creation of law where the company states itself as a legal personality or an artificial person which has its own rights and duties. In this research paper authors have gone through various books, research papers and online materials to draw down the principle of the corporate personality in one concentrated form. In this research paper the authors have focused upon the Companies Act 2013 for mentioning the vital definitions related to the topic. The research paper gives description about what exactly is a corporate personality, its characteristics, etc. The paper also focuses upon the “lifting of the corporate veil” and why is it termed as a disadvantage of the corporate personality along with the case laws.

Keywords: corporate personality.

I. INTRODUCTION

According to section 2(20) of the companies act, a “company” means a company incorporated under the act or under any previous company law. ³ “The word “company” has no strictly technical or legal meaning.” ⁴ A company is formulated for the purpose of carrying a business for profit, or a company is an association of persons for some common object or objects. As per the law, there are many terms by which a company is being denoted to state its existence is a different personality. A company or a corporation is an artificial person (it can also be termed as a legal entity) who has the ability to enjoy its rights and duties. Further the concept of corporate personality states that a company with such personality is an independent legal existence separate from all of its shareholders, directors, officers and creators. This is called as the veil of incorporation.

II. CHARACTERISTICS

1. Separate Legal Entity or Independent Corporate Existence

In law, a company is seen as a separate and an independent person from its members who compose it. The creditors of the company can take back their funds only from the company and

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³ The Companies Act 2013

⁴ *BUCKLEY J in Stanley, re, (1906) 1 Ch 131, 134.*

its property not from an individual person. Therefore, a company is not liable for paying an individual debts and isn't liable to make any personal profit or benefit in any way. The company's property is to be used only for the benefit of company.

2. Limited Liability

The company being a separate legal person, is the owner of its assets and bound by its liabilities. A company can be a company limited by guarantee or a company limited by shares. The liability of the shareholders is limited to a certain guaranteed amount mentioned in the memorandum which are supposed to be paid of only in the event of liquidation and losses suffered by the company. Where on the other side, a company limited by shares is when members liability is limited to the unpaid amounts or shares they hold.

3. Artificial legal person

A company is not a natural person but an artificial legal person. Therefore, a company cannot make its decisions on its own, but it has acts proposed by its members and directors on the principles of which a company works. Also, a company exists only in contemplation of law. As it is an artificial person, it has to depend upon natural persons like directors, officers, shareholders, etc. These members represent the company, and they work within the bound authority.

4. Perpetual succession

Perpetual succession of a company means that the members of the company may keep changing but that will create zero effect on the company's continuity. The death or insolvency of any individual member of the company does not affect the corporate existence of the company in any way. Therefore, "the organs of the company may come and go but the company can go on forever."⁵

5. Transferability

Transferability of a company means that the shares are easily and freely transferable without obtaining the consent of the other members of the company⁶. This process is different in a public and private company according to the manner specified in their act. Transferability of the shares of a company provides liquidity to the investor and at the same time ensures the stability of the company.

⁵ Gower, book: Principles of Modern Company Law (3rd edn 1969)

⁶ Section 44 of The Companies Act 2013

6. Separate property

A company being a legal person has the authority of owning, enjoying and disposing of property in its own name. In the case of *Bacha F Guzdar v. CIT Bombay*,⁷ it was stated that company is a legal person in which all its property vested, and by which it is controlled, managed and disposed of.” In the case of *Macaura v. Northern Assurance Company Ltd*⁸, the court held that the property of the company is the property of its own and not of its shareholders.

7. Capacity to sue and be sued.

A company being a artificial legal person, can sue and be sued in its own name.⁹ Though a company owns an authority to file a complaint against any act done regarding its decency or any criminal behaviour but it must be represented by a natural person (as company is said an artificial personality). A company owns the right to protect its fair name , also it has the right to seek damages against any defamatory action gets in trend causing affect on its business.

Landmark case:- TVS Employees Federation v. TVS & Sons Ltd, 1966

III. LIFTING THE CORPORATE VEIL

Before we intake the concept of lifting the corporate veil there is an eminent need to understand the concept of a separate legal entity it means that when a company has been registered it is meant to be treated separately from that of its members, shareholders, directors, and owners mean just like a natural person the company becomes an artificial person in furtherance of which the company has its own corporate personality, signature, can possess property and can also take legal actions. The concept of a separate legal entity also describes that even though the members are company owners, they can also be its creditor. In other words, we can say that for the wrongful acts of the members, It is the member themselves who shall be held responsible, not the company similarly for the wrongful acts of the company it is the company itself who shall be held responsible, not the members thereby completely separating the members and company. But all this can be taken into account only in terms of law because, in reality, a company can only exist and function because of its members hereby implying that as artificial person it needs a natural person, for example, human beings to function for it. But sometimes it may so happen that the member of the company misuses the name of the company by committing fraud and illegal acts on behalf of the company and because of the concept of a separate legal entity the members and company are treated separately thereby making it look

⁷ AIR 1955 SC 74

⁸ 1925 AC 619 (HL)

⁹ Union bank of India vs Khaders International constructions ltd (1993) 2 com LJ 89 (Ker).

that it is the company who has committed the wrongful act and not the members. Therefore because of these special cases, the court has introduced the concept of lifting the corporate veil in which the demarcation between the members and the company is lifted to identify those people who actually committed the wrongful act to incriminate them and not the company.

Circumstances under which the court may lift the corporate veil:

- **Statutory provisions:**

1. Misstatement in the prospectus: The prospectus of a company provides valuable knowledge such as information about shares, debentures, names of the directors, the main objective of the company etcetera. Here a member publishes an untrue statement in these prospectuses knowingly then the corporate veil shall be lifted and the person would be held personally liable the provisions relating to it are section 26(9), Section 3435, and punished under section 447.

2. Inability to repay the application money: It is a written rule that after the issue of share capital minimum subscription amount needs to be complied with by the public within 30 days but if the minimum subscription is not fulfilled within 15 days then whatever application money the company has got in exchange of the minimum subscription it needs to repay it back to the public but if the application money is not refunded it is not the company but the members would be held personally responsible.

3. Misdescription of companies name: When the officer of a company signs on behalf of the company on any document in which the name of the company is mentioned incorrectly then the person would be held personally responsible in the case of **Hendon vs Adelman**¹⁰ Signatory director were held personally liable for stating companies name on a signed check as CR agency limited while the actual name of the company was L&R agencies limited.

4. Fraudulent conduct: whenever in the case of winding up of the company it is founded out that the company's name was used to commit fraudulent activities then the courts need to first keep the persons responsible for it whosoever it may be for providing justice it would look beyond the corporate veil.

5. Pressurizing individuals to invest in the company: If a member of a company by false, deceptive, misleading statement that induces the general public to invest more capital in the company or to provide him some benefits or to provide any monetary benefits to members of the said company so the person would be held personally responsible for it.

¹⁰ 1973 New LJ 637

6. Numbers of members below the statutory limit: It simply puts that if any company works with members who are in less quantity than what is specified in their respective statutory provisions and the particular company has been running for more than six months then it is not the company at fault but rather the members themselves.

- **Judicial pronouncements**

1. Tax evasion: Like a natural person is subjected to some kind of taxes an artificial person is also bound to pay back taxes, It is common knowledge that the company itself cannot make financial transactions and it needs a natural person to pay on its behalf therefore if the company is found evading taxes then the company is not at fault but rather the duty-bound members. In the case of **Re Sir Dinshaw Maneckij Petit Bari**¹¹ sir Dinshaw was enjoying huge dividends and interest, in order to evade his taxes he founded four companies in which his income was credited to the accounts of these companies and this amount was repaid back to him in the form of pretended loans it was held that the purpose of founding these companies was simply to evade taxes.

2. Companies intentionally avoiding legal obligations: When the court is of the opinion that the company is avoiding any legal obligations then the court shall lift up the corporate veil and keep the concerned individual personally accountable for it.

3. Liability for working outside the scope of MOA and AOA: It means that a company is bound by its MOA and AOA in respect of the scope of work so if the company without any alteration to the respected documents works outside its area of operation then such would be seen as an ultra vires act and it is not the company at fault but rather the members working behind the corporate veil.

4. Alien or enemy character of a company: It is a common notion to believe that the company doesn't possess any bad or good personality traits thus a company cannot be counted as an enemy character but if the members, shareholders, directors, and owners working for that concerned company and belong to the nationality of an enemy state it is only then the company would be held as an enemy character company. To expound such a concept the case of **Daimler Co. Ltd. vs Continental Tyre and Rubber Co Ltd**¹² can be taken into account in which it was held that when determining the enemy character of a company the nationality of the shareholders must be taken into consideration thereby lifting the corporate veil.

5. Negligent activities performed by subsidiary companies: It means that if some negligent

¹¹ AIR 1927 bom.371

¹² [1916] 2 AC 307

act are performed by subsidiary companies then its respective holding companies would be held liable.

1. Catherine Lee v Lee's Air Farming Ltd¹³

Facts of the case:

Lee (deceased) formulated a company called LEE'S AIR FARMING LTD in which lee held 2999 out of 3000 shares thereby making him an excellent director of the company with that he was an active employee, as he was a pilot as well. In 1956 lee met with a fatal accident that caused his death during the course of his employment thereby compelling his wife to claim workmen's compensation from the concerned company.

On the other hand, the company contended that as lee held the maximum number of shares thus he is the owner of the company thereby setting a prohibition on him and his dependents for workmen's compensation claim.

Issues raised:

So deceased's wife contended for a separate legal entity claiming that Mister Lee and the company are separate and because the accident occurred during the course of the employment thereby the company is bound to pay its employee compensation amount just like a servant is entitled to claim for compensation from their master

Whereas the company contended that Mr. Lee and the company are not a separate legal entity but in fact, one person in the eyes of the law as if the corporate veil was lifted it could be noted that Mr. Lee is not entitled to claim compensation as he is not a servant or an employee in the concerned company.

Held:

But the court favoured the petitioner and held as there is the concept of a separate legal entity thus the company is bound to compensation to its workforce.

2. Salomon v A Salomon & Co Ltd¹⁴

Facts of the case:

A company initially instigated by Salomon called Salomon Ltd as a sole trader, that was later transferred to Salomon and his family in exchange for which he got shares and debentures. Later the company went into liquidation during which if Salomon recovered his interest amount

¹³ [1961] UKPC 33, [1961] AC 12

¹⁴ [1896] UKHL 1 [1897] AC 22

through debentures which he was entitled to get paid primarily and it was only after his payment the unsecured creditors could have claimed for their entitled amount. But the problem was that, if the entitled amount was paid to Salomon then there was nothing left for the unsecured creditors.

Thus the unsecured creditors claimed that Salomon and Salomon Ltd are one legal entity means they contended that there is no difference between its members and the company therefore Mr. Salomon is not entitled to get any amount from the company but rather he is liable to the entitled benefits to the companies unsecured creditors.

Issues raised:

The main issue that was raised was that because Salomon held the majority of the share capital, then in the case of liquidation of the company where company assets weren't enough to repay to all of its members thus whether the majority share capital holder would be personally responsible for the companies liability/ unlimited liability.

Held:

The court of Appeal ruled against Salomon but upon appeal, the House of Lords reversed the former judgment and upheld that If the company is duly incorporated then it has its own liabilities and assets and in the case of financial instability it is the company's assets that should be used especially in the case of limited liability company thereby making it immaterial of a fact that who is the promoter or majority shareholder thus setting a corporate veil between the members of the company and the company.

IV. CONCLUSION

In conclusion, the concept of corporate personality has become an essential part of modern business and commercial law. It provides a legal framework for companies to conduct their business and protect the interests of their shareholders. A company with a corporate personality enjoys separate legal existence, limited liability, perpetual succession, and capacity to sue and be sued. However, the principle of corporate personality also has its limitations, such as the lifting of the corporate veil, which can expose the shareholders to personal liability. Overall, the concept of corporate personality has played a crucial role in the growth and development of modern business and commerce, and its importance is likely to continue in the future.

The concept of a separate legal entity has given companies the status of an artificial person, distinct from its members, shareholders, directors, and owners. However, in certain exceptional circumstances, where the members of the company misuse the name of the company by

committing fraudulent or illegal acts on behalf of the company, the court may lift the corporate veil to identify the actual wrongdoers and hold them accountable. There are statutory provisions and judicial pronouncements that allow the court to lift the corporate veil, including cases of misstatement in the prospectus, inability to repay the application money, fraudulent conduct, tax evasion, companies intentionally avoiding legal obligations, liability for working outside the scope of MOA and AOA, and alien or enemy character of a company. By lifting the corporate veil, the court can ensure that justice is served and that those who have committed wrongful acts are held personally responsible, rather than the company itself.

The cases of *Catherine Lee v Lee's Air Farming Ltd* and *Salomon v A Salomon & Co Ltd* highlight the concept of separate legal entity in company law. While *Catherine Lee v Lee's Air Farming Ltd* emphasized that a company is bound to compensate its employees regardless of the shareholding of the deceased, *Salomon v A Salomon & Co Ltd* established the principle that a company is a distinct legal entity separate from its members. These cases provide important guidance for companies and their stakeholders and demonstrate the importance of understanding the legal personality of a company in commercial transactions.

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