Corporate veil and Execution Proceedings: Tracking its evolution through case laws.

Harshvardhan Yadav*

The doctrine of lifting the corporate veil is a highly debated upon topic, on which a plethora of information is to be found. To put it briefly, the doctrine allows the Court to lift or pierce the veil of corporate personality, which serves to protect the individuals behind the working of a company. The veil is lifted "when corporate personality is being blatantly used as a cloak for fraud or improper conduct"[1]. The corporate veil separates a company from its beneficiaries or its owners and gives the company its own legal personality[2], with rights and liabilities similar to that of human beings. In many cases, however, this veil is misused, and under its shadow, illegal acts are commissioned. The following paper will aim to shed light on the nature of this corporate veil and when and how it can be lifted. It will utilise cases laws from the last two decades to illustrate how the application of this doctrine has evolved, with a particular focus on execution proceedings.

The nature of a company is defined by its five features[3], one of which is its separate legal existence. Illustrated in the case of *Salomon v Salomon & Co. Ltd*[4]., where unsecured creditors of Salomon's leather business sought damages against him, claiming that his company was a moniker for Salomon himself. Lord Macnaughtan, in the aforementioned case, held that "A company at law is a different person altogether from its subscribers", and although after the business was transferred from Salomon to his company, wherein Salomon himself was the manager, the company could not have been said to be an agent for Salomon, and he and other members were held not liable[5]. Similarly, in the case of *Kondoli Tea Co. Ltd*[6], the Court further reiterated that a "company is a separate person, even though the persons conveyancing the property were its shareholders; it has the same effect as would have been if they were any other persons", and thus refused to lift this corporate veil in order to protect the shareholders of the company. In many cases, however, the separate personality of a company can be employed for committing frauds or illegal acts. In such cases, the aforementioned corporate veil protecting the shareholders must be lifted to secure justice. The reasoning for the lifting of corporate veil is based on the fact that "an artificial person is not capable of doing anything illegal or fraudulent, the facade of corporate personality might have to be removed to identify the persons who are really guilty[7]"

Although the lifting of the corporate veil is an exception more than a rule, it has been employed by the Judiciary in various cases. Through their judgments, the Judiciary has highlighted certain features and characteristics of the procedure of lifting the corporate veil. Firstly, a situation where a corporate veil can be lifted is divided into two categories[8], namely, (i) under statutory provisions, and (ii) under judicial provisions. Under Statutory provisions, the veil of corporate personality may be lifted when the facts of some instances qualify under the provisions of an Act. The doctrine is implicit in many provisions of the Companies Act, 2013 itself, for example, section 34 & 35, which provide for liability of directors, promoters and other officials, behind the issue of prospectus which has caused damage to shareholders. Other sections from the Companies Act which make use of this doctrine include sections 12, 39, 73, and deal with lifting of the corporate veil to punish those of illegally harming a company's shareholders[9]. Under the second category of piercing the corporate veil through judicial interpretation, provisions for employing this doctrine were given through judgements by the Judiciary, some of which include situations such[10] protection of revenue, prevention of fraud, prevention of subsidiaries acting as agents, and in cases of economic offences.

As mentioned earlier, piercing of the corporate veil is an exception, not the rule, and depending on the facts of each case, the veil can be either (i) penetrated, (ii) extended, (iii) ignored, or (iv) peeped

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*B.A.L.L.B, Batch of 2023, Jindal Global Law School, Sonipat, Haryana. (Authored on 10 December, 2020)

[1] S. Ottolenghi, *From Peeping Behind the Corporate Veil, to Ignoring it Completely*, 53 The Modern Law Review 338-353 (1990).

[2]Arjya Majumdar, *Corporate Personality in India*, International Law Office (2007..

[3] John Armour, Henry Hansmann & Reinier Kraakman, The Essential Elements of Corporate Law: What is corporate law?, Harvard law and Economic Research series 2. (2009).

[4] MANU / UKHL / 0001 / 1896.

[5] Majumdar, supra note 2, at 2.

[6] MANU/WB/0111/1886.

[7] G.K. Kapoor & Sanjay Dhamija, *Company law and Practice* (24 ed. 2019) 18.

[8] Ibid 19.

[9] Ibid 19.

[10]Ibid 22.

behind[11]. Penetrating of the corporate veil biases itself more towards the shareholders of a company, and holds them liable for their actions. Penetrating the veil also recognises the direct interest of a shareholder in the company, with regards to its profits and taxes. This acting of penetrating the veil is usually done by proving the existence of an agency. The aim of penetrating a veil, however, is not to establish the Agency itself, but to use it to prove an association between the company and the shareholder. "Agency is not the aim, but the means of lifting the veil. The courts thus 'impose' an agency relationship - which may be called, therefore 'implied' or 'constructive agency'[12]". Peeping behind the veil of corporate personality is the least invasive form of employing the aforementioned doctrine. This form consists of lifting the veil only to get a clearer understanding of the working and management of the company. It is used to gather the necessary information about the shareholders, such as the number of shares they have in the company[13]. An example of this form in practice is found in the case of *Daimler Co. Ltd. v. Continental Tyre & Rubber Co.[14]*, wherein the Court peeped behind the veil in order to determine the origins of the shareholders of the company. Extending of the corporate veil occurs when a larger company is ordered its subsidiaries under the purview of its own veil. The lifting of the veil herein is done by "its extension so that it embraces a bunch of companies"[15]. The goal herein is to avoid fraud or misrepresentation[16] of distinct companies. When a bunch of companies undertake a common business activity, it is advantageous to put them under a single veil. Lastly, ignoring the veil of corporate personality is the harshest employment of this doctrine. The Courts tend to utilise this extreme measure when they are sure that a company's ultimate goal is to defraud their creditors or commit illegal acts. These companies are often defined as shams, puppets or bubble companies[17].

As has been aptly stated in the case of *State of U.P. and Ors. v. Renusagar Power Co[18],* the "horizon of the doctrine of the lifting of the corporate veil is expanding". As the modes of committing illegal acts through the corporate increase, the Court has used in authorities in various jurisdictions to pierce the corporate veil. One such instance is in execution proceedings.
The matters in execution proceedings concerned themselves with the question of a court's authority of lifting the corporate in execution proceedings. Many cases have shed light on this question, some of which will be expounded upon below.

An often-cited paragraph [19] from the case of *Delhi Development Authority vs Skipper Construction Company*[20]*,* states that "where the corporate character [of a company] is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil to enable it to pass appropriate orders to do justice between the parties concerned". Adjudicated upon in 1996, this case has been cited in various judgement wherein lifting of the corporate veil was allowed in execution proceedings.

An example is the case of *Formosa Plastic Corporation Ltd. vs Ashok Chauhan[21]*, a case from 1998, wherein the Delhi High Court ruled that courts have the power to lift the veil of corporate personality even in execution proceedings. The facts of the case pertained to the execution of a foreign decree in India. The Court, herein, in order to determine the assets owned by Ashok Chauhan and his acquaintances, ruled that it could penetrate the corporate veil to scrutinise evidence. The Court again stressed that this doctrine only is employed in cases where fraud or other illegalities are brought to light.

In 2004, in the case of *Singer India Ltd. v Chander Mohan Chadha and Ors*.[22] the Supreme Court further stressed on the importance of fraud or misrepresentation by the company, wherein the "principal grounds where [piercing of the corporate veil] can be adopted are to protect the interest of the Revenue and also where the corporate personality is being blatantly used as a cloak for fraud or

[11] Ottolenghi (n 1) 340.
[12] Id 345.
[13] Id 341.
[14] [1916] 2 AC 307.
[15] Ottolenghi, supra note 1, at 347.
[16] Other illegal acts also include tax evasion. This form is also used to ensure that companies include the profits and losses of their subsidiaries and avoid misrepresenting their accounts.
[17] Ottolenghi supra note 1 351.
[18] MANU / SC / 0505 / 1988.
[19] Tanvi Goenka & Chakrapani Mishra, Lifting Of Corporate Veil In Execution Proceedings - Litigation, Mediation & Arbitration - India Mondaq.com (2020).
[20] MANU / SC / 0497 / 1996.
[21] MANU / DE / 0259 / 1999.
[22] MANU / SC / 0626 / 2004.

improper conduct". The basis on which corporate veil is to be pierced, even in execution proceedings, is ultimately based on the presence of grounds of frauds being committed. This principle was further upheld in 2010 judgement of *V.K. Uppal vs M/S Akshay International Pvt*[23]*.*

In the aforementioned *V.K. Uppal case*, the Delhi High Court pondered upon the question of whether the Court can lift the corporate veil in an execution proceeding. It relied on the previously mentioned case, and stated that "though the courts have watered down the principle *in the Solomon,* to cover the cases of fraud, improper conduct etc., as laid down in *Singer India Ltd. v Chander Mohan Chadha,* but a case therefor has to be made out."[24]. With this principle in mind, the Court ruled that in the instant case, the corporate veil would not be lifted as no averments were made in respect to claims of fraud or illegal acts by the company.

More recently, in 2016 the Punjab and Haryana High Court again explored the question of lifting the corporate veil in execution proceedings in the case of *Sai Sounds Private Limited v Kiran Contractors Private Limited*[25] and again concur with the judgement from *Formosa Plastic corporation* case.

The *Bhatia Industries and Infrastructure Limited v Asian Natural Resources Ltd.*[26] further acquiesced with the two cases mentioned in the preceding paragraph, and further added four scenarios where the veil of corporate personality can be lifted. Briefly stated, these include (i) two separate corporations function in partnership with another, (ii) where a company has a controlling interest in its subsidiaries, to the extent the subsidiary does not have independent control of its actions, (iii) where a company is being used to mask the acts of the parent company or directors of the company, and (iv) when two companies are inextricably linked[27].

Recently, the Bombay High Court passed its judgement in the case of *Mitsui OSK Lines Ltd. v Orient Ship Agency Pvt Ltd & Ors*[28], wherein it refused to lift the corporate veil in an execution proceeding. The judgement reiterated a number of circumstances mentioned hereinabove and provided further clarifications as to when can a corporate veil be lifted. Furthermore, the Bombay High Court refused to lift the veil of corporate personality on the grounds that the additional respondents were neither parties to a foreign arbitration agreement nor the foreign award which was meant to be executed in India. Moreover, the Court held that there was no impropriety on the part of the judgement debtor, and in congruence with previous decisions, the Court refrained from lifting the veil.

The evolution of the doctrine of corporate veil over the years illustrates that it is being used definitively and as an exception and not the rule. The courts have restricted its use to situations where fraud or impropriety is in question. The application of this doctrine, however, depends solely on the judges of each case. The large area of discretion adds constant confusion as to the kinds of situations where the doctrine would be applicable. As seen in the cases mentioned above, in the case of execution proceedings too, many characteristics have been added over the years. The lack of strict basis and an ever-changing form of applicability of the doctrine illustrate the arbitrariness that resides with the courts. Upon their discretion, courts can decide upon the cases where a corporate veil can be pierced, as is clear from the aforementioned cases.

Based upon the aforementioned rulings, the tenet of lifting the corporate veil is to be used in exceptional cases, and not as a rule. In India, while the boundaries of lifting the corporate personality of a company have been pondered upon and enrolled in the decisions articulated by the courts, an exhaustive list of situations where it is applicable has not been identified, neither has a firm foundation been set for its administration. Any application to penetrate the corporate veil would rely upon facts and issues of each separate case, wherein the remedy provided by the courts would be only to the extent of damage done by the members controlling the board of the company. Keeping in mind its uncertainty, specific facts, however vague, do appear from a study of the aforementioned cases. These include accusation of impropriety, by a company's administrators, exclusion of third parties in when the execution proceedings concerns a foreign award, and fraud or misrepresentation by the company,

[23] MANU / DE / 0320 / 2010.
[24] Ibid.
[25] MANU / PH / 0154 / 2016.
[26] MANU / MH / 1827 / 2016.
[27] Ibid.
[28] MANU/MH/0194/2020.

which has been concluded has as necessary ground in all of the aforementioned cases. The cases also confirm that lifting of the corporate veil is possible in execution proceedings.