

A STUDY ON LIFTING OF CORPORATE VEIL WITH REFERENCE TO CASE LAWS

¹P. Shanthini,²MS. Arya. R

¹ Student, B.A.,LLB, 3rd yr, Saveetha School Of Law, Saveetha institute of medical & technical sciences,
Saveetha University,Chennai 77, Tamilnadu,India

² Assistant Professor, Saveetha School Of Law, Saveetha institute of medical & technical sciences,
Saveetha University,Chennai 77,Tamilnadu,India

¹shanthiniparama@yahoo.com,²adv.aryar@gmail.com

ABSTRACT

The term company does not have a technical meaning. As per the companies act 2013 company means any a company formed and registered under the Companies Act 2013. The term company includes the corporate body or corporation but does not include the cooperative society which is registered under the cooperative society act. A company is considered as a legal entity or a legal which has the capacity to survive beyond the lives of its members this extraordinary feature of company is known as perpetual succession which simply means men may come and men may go but the company remains the same until it is properly winded up. The basic principle is that there is a veil or a screen in between the company and its members. The members of the company misuse the corporate veil and get protection from legal proceedings which has been imitated against the member for any mischief done. In order to prevent the misuse of corporate veil for fraudulent activities by the members the court will break through the corporate veil and find out the wrong doer who has taken shelter behind the corporate veil. The said corporate veil will be lifted by the courts when it ignores the company and ascertain the factors which operate the break down the cooperate insulation. In this paper the researcher tries to analyse the the doctrine of lifting up of corporate veil and to determine the reasons for judicial disregard of separate entity principle.

Key words : Company, cooperation, Judicial interpretation, Corporate veil, Members.

INTRODUCTION

Corporate personality has been described has one of the most important fundamental principle of company law in almost all the countries in the world. It constitutes a most important

principle because of which a company is considered a distinct legal entity from the shareholders of the same. Once a company has been fully incorporated it will be considered as a separate legal entity distinct from their shareholders and it has an independent existence which is the most extraordinary feature of the company. Company will be regarded as a separate legal entity and is different from its promoters, shareholders, directors, members and the concept of corporate veil separating the company from the promoters and other members of the company. A company being a legal entity it has the capacity to purchase, enjoy and sell a property. The owner of such property will be the company itself and not the directors or any other members of the company. [Lifting of Corporate Veil with reference to Leading Cases | Corporate Law Reporter corporatelawreporter.com](http://corporatelawreporter.com) > 2013/06/12). The problem of lifting of corporate veil has been considered by the judiciary and commented for many years and there are examples in cases where the courts have negated strict application of doctrine of lifting up of corporate veil. The doctrine of lifting up of corporate veil has been established to maintain efficiency in business. The law goes behind the veil or screen in between the company and its members in order to find out the person behind the mask for the sole reason that is to make the wrongdoer personally liable by applying the doctrine of lifting up of corporate veil.

A clear understanding of the doctrine of lifting up of corporate veil is necessary and also clear understanding of corporate personality is also necessary along with the provisions in Indian companies act 2013 and other provisions relating to lifting up of corporate veil. The elements of lifting up of corporate veil and grounds under which the veil is lifted can be easily understood through the lens of leading case laws and judgement passed by the honorable courts. The researcher tries to study about doctrine of lifting of corporate veil, To study about law of piercing the veil To determine the reasons for judicial disregard of separate principle entity to analyse the various statutory provisions relating to lifting of corporate veil.

HYPOTHESIS

ho: There is no sufficient provisions relating to lifting of corporate veil under the companies act 2013 when compared with 1956 act.

Ha: There is sufficient provisions relating to lifting up of corporate veil under the companies act 2013 when compared with 1956 Act.

RESEARCH QUESTION

Whether the provisions relating to lifting of corporate veil under companies act 2013 when compared with 1956 act is sufficient or not?

METHODOLOGY

The present study is based on doctrinal study based on secondary sources which includes books, e sources, newspaper journals and research articles.

COMPANY AS A SEPARATE LEGAL ENTITY

The company as separate legal entity was first established in the case of *Salmon Vs. Salmon Company Ltd.* Salmon who was a sole trader sold his manufacturing business to the respondents company that's is Salmon company Ltd which is a company he incorporated by getting consideration for all and six shares in the company and got 10 pounds in form of debentures. His wife and his five children's were the subscribers of memorandum and each took one share. The business was collapsed subsequently and he made a claim that debentures held is a secured debenture. It was argued by the liquidator that the company and salmon are one another the same that is business was carried on behalf of Salmon. The house of lords on appeal held that Salmon and company Ltd was not a sham and the debts of the company are not the debts of Salmon because they were two separate entities and once an artificial person has been established they must be treated like an independent person ([The Doctrine Of Separate Legal Entity: A Case Of Salomon Vs Salomon & Co Ltd https://writepass.com › journal › 2016/11](https://writepass.com › journal › 2016/11)). In another leading case *Macura Vs. Northern assurance company Ltd* it was decided by the house of lords that insurers will not be held liable under the contract for insurance on any property that was insured by the plaintiff but which was owned by the company in which the plaintiff has all the paid shares. The house of lords held that only the company can have the separate legal owner of the property and not the plaintiff have any insurable interest. The plaintiff being a shareholder did not have any insurable interest in the property as he only the shareholder of the company. In another leading case of *Lee Vs. Lee Air farming* it was held by Privy council that Lee is separate entity form the company which was controlled by Lee who would be an employee of the company so the wife of Lee can claim compensation for his death under the workmen compensation act ([Lee v. Lee Air Farming Ltd | Workers' Compensation | Employment - Scribdhttps://www.scribd.com › document › Le...](https://www.scribd.com › document › Le...)). In the case of *Horbert bridge Co Ltd Vs.*

FCT the house of lords relied upon the judgement given in the leading case of *Gas lighting improvement company Ltd Vs. IRC* it was held that between the investors who had participated as a shareholder and between the undertaking carried which is carried on the law will impose another person either real or artificial or the company itself and the business which is carried on by the company and the capital employed is the capital and not in either case the business or the capital shareholder. In the most recent case of *Industrial equity Vs. Blackburn* the high court held that principle that operates to prevent the holding company being treated as wholly owned and subsidiary profits if it's own. Therefore it can be said that there is an highest authority for the separate entity concept. But consideration has to be given to limitations of separate entity principle which will completely deny the efficiency of the entity as a legal person which is separate from its founders and other members of the company. Judgement given by the judges in the case of *Salmon Vs. Salmon company Ltd* has indicated the recognition of certain exceptions to the principle of separate legal entity by the courts. A company being recognized as separate legal entity is possible only if there is no fraud and there is no agency and is the company was a real one and not a fictitious one ([Lifting of Corporate Veil with reference to Leading Cases | Corporate Law Reporter corporatelawreporter.com > 2013/06/12](#)). In a leading case of *Littlewoods Mail order stores Ltd Vs. IRC Lord Denning* stated that incorporation of a company does not fully cast a veil over the personality of a company limited by shares which the courts cannot see ([The Case Of Littlewoods Mail Order Stores Law Company Business ... https://www.uniassignment.com > the-cas...](#))

The courts can remove the mask and then they can look behind the mask or veil to see the person who has hidden behind the veil and held that a corporation will be looked upon as a legal entity as a general rule but when notion of legal entity is used to defeat the convenience of the public at large justify anything done wrong protect fraud and also defend crime the law or the court will regard the corporation as an association of person. The judicial discretions and also the legislative action allows the principle of separate entity of a company.

LIFTING THE CORPORATE VEIL

The doctrine of Lifting up of the corporate refers to the possibility of looking behind the company's framework or looking behind the company's separate personality to make the members liable who have done any wrong and have hidden behind the veil of the company, as an

exception to the rule that they are normally protected by the corporate shell that is they are generally not liable to the outsiders at all the either as principles of the company or as an agents or in some other guise, and they are already generally liable to pay the company what they agreed to pay by way of share purchase price or guarantee, nothing more. When the true legal position of the company and the circumstances under which the entity as is considered as a corporate body will be ignored and the corporate veil will be lifted by the judiciary by applying the doctrine of lifting up of corporate veil the individual shareholder may be treated as liable for his wrongful acts or mischief done by him (Lifting The Corporate Veil - Academike-Lawctopus<https://www.lawctopus.com/academike>)The corporate veil may be lifted in the case where the statute itself and compel the lifting the veil or fraud or improper conduct is intended to be prevented “It is either necessary nor desirable to enhance the classes of cases where lifting the veil is permissible, that must be necessarily depend upon the relevant statutory or on the other provisions relating to it, the object must be achieved, the implied conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc.” This was upheld by honorable Supreme Court in the case of Life Insurance Corporation of India v. Escorts Ltd (Lifting The Corporate Veil - Academike – Lawctopus <https://www.lawctopus.com/academike>)

There are certain circumstances under which corporate veil may be lifted can be catorized broadly into two following heads:

1. Statutory Provisions
2. Judicial interpretation

STATUTORY PROVISIONS

As per the provisions under Section 5 of the Companies Act any individual person committing any wrong or an act which is illegal to be held liable in respect of the offences as ‘officer who is in default’. This section of the companies act gives a list of officers who shall be liable for punishment or for penalty under the expression ‘officer who is in default’ includes a managing director of the company or a whole-time director of the company.

JUDICIAL INTERPRETATIONS

Contradicting with the limited and careful statutory directions to 'lift the veil' judicial inroads into the principle of separate personality are more numerous. When an fraudulent or misuse of corporate is made the courts will break through the corporate veil and find out the true offender in order to punish the person for the offence committed by him.

DEVELOPMENT OF DOCTRINE OF LIFTING UP OF CORPORATE VEIL

One of the most important characteristic features of a company is that the company is regarded as a separate legal entity which is distinct from its members shareholders promoters. The most relevant illustrative case in respect to the separate legal entity concept is the case which was decided by the House of Lords- in *Salomon v. A Salomon & Co. Ltd.* In this case Mr. Solomon had started a business of shoe and boots manufacture. 'Salomon & Co. Ltd.' was incorporated by Solomon which has seven subscribers- one subscriber being Himself, his wife, his daughter and his four sons. All the shareholders held the shares of UK pound one each ([Lifting Of The Corporate Veil - LawTeacher https://www.lawteacher.net > business-law](https://www.lawteacher.net/business-law)) The company have purchased the business of Salomon for an amount of 39000 pounds, the consideration for purchase was paid in terms of 10000 pounds debentures by securing the companies assets 20000 pounds in fully paid 1 pound share each and the balance in form of cash. The company within one year ran into many difficulties and liquidation proceedings was commenced. The assets of the company was not even sufficient to discharge the debentures and nothing was left to give to the insured creditors. The House of Lords had unanimously held that the company had been validly incorporated since the Act only required seven members holding at least one share each and that Salomon is separate from Salomon & Co. Ltd. Thus The entity of the company is entirely different or separate from that of its shareholders; it bears its own name and has a common seal with its own name its assets are distinct and separate from those of its members; it has the right to sue and be sued exclusively for this purpose; liability of the members are limited to the capital invested by them. Further in the case of *Lee v. Lee's Air Farming Ltd* it was held by house of lords that that there was an valid contract of service in between Lee and the Company, and Lee was a therefore a worker within the meaning of the Act. In the case of *The King vs Portus the ex parte Federated Clerks Union of Australia* where Latham CJ while deciding the question whether or not employees of a company owned by the

Federal Government were not employed by the Federal Government ruled that the company is a distinct person from its shareholders. The shareholders are not liable to the creditors for the debts of the company. The shareholders do not own the property of the company.

CONCLUSION

The principle laid down by the house of lords on the case of Salomon v. A. Salomon & Co. Ltd is that the same rule which is being followed by the courts and the instances of piercing the veil are the exceptions to this rule. The law making authorities or the legislature and the honourable High courts and Supreme courts in many cases have allowed the corporate veil to be lifted based upon the doctrine of lifting up of corporate veil. The companies act 2013 has brought many changes when compared with the 1956 act. It's has many enriched provisions relating to articles of association registered values lifting of corporate veil etc. The principle that a company has its own separate legal personality of its own finds an important place in the Indian constitution. Article 21 of the Indian Constitution says that “ No person shall be deprived of his right to life and personal liberty except according to procedure established by law” as per the provision Under this Article a company also has the right to life and personal liberty as a person and this unanimously held in the case of Chiranjital Chaudhary v. Union of India where the Honorable Supreme Court held that fundamental rights guaranteed by the Indian constitution are available not only to the individual citizens but are also available. So, a corporation has a separate property where it can own and sell properties, it has the right to sue or be sued, or commit a criminal offence because a corporation is made up of and run by people, acting as agents of the company.

REFERENCES

1. The Case Of Littlewoods Mail Order Stores Law Company Business ...
<https://www.uniassignment.com> > the-cas...
2. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1725433
3. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
4. Trishala A , Lakshmi T and Rajeshkumar S, “ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

5. <https://www.lawteacher.net/free-law-essays/business-law/article-on-lifting-of-the-law-essays.php>
6. <http://www.legalservicesindia.com/article/1876/Lifting-of-Corporate-Veil-Indian-Scenario.html>
7. Salmon Vs. Salmon company limited (1887) A. C 22
8. Lee Vs. Lee Air farming ltd (1961) AC 12
9. H. L.BOLTON (Engineering) Vs. T. J. gharam & sons Ltd 1961
10. <https://googleweblight.com/i?u=https://www.emeraldinsight.com/doi/pdf/10.1108/IJLM-A-03-2013-0011&hl=en-I>
11. <http://www.legalindia.in/liftingofcorporateveiltheenglish.indianlaws.com>
12. <http://www.jalisyndicate.com/wp-content/uploads/corporat>
13. <http://www.phoneexlegal.in/wpcontentuploads.liftingofcorpotate>
14. <https://googleweblight.com/i?u=https://www.lawctopus.com/academike/corporate-veil&hl=en-IN>
15. <https://www.emeraldinsight.com/doi/abs/10.1108/IJLMA-03-2013-0011?journalCode=ijlma>
16. <http://www.legalserviceindia.com/articles/corporate.htm>
17. <https://www.google.co.in/search?client=ms-android-vivo&q=lifting+of+corporate+veil+ppt&sa=X&ved=2ahUKewjggMOInbTbAhUErI8KHUpcCWsQ1QIoBHoECAoQBQ&biw=360&bih=616>
18. <https://www.linkedin.com/pulse/salomon-v-relevance-modern-company-law-oladotun-gbolagunte>
19. <http://essayandreportwriting.com/academics/report-writing-samples/solomon-v-solomon-co-ltd-case-study-analysis/>
20. <http://wordofmorrow.blogspot.com/2010/04/salomon-v-salomon-co-ltd-1897-single.html?m=1>
21. <https://www.google.co.in/search?client=ms-android-vivo&q=lee+v+lee%27s+air+farming+ltd&sa=X&ved=2ahUKewjhxOGonbTbAhWKvo8KHcv9BrIQ1QIoAXoECAkQAg&biw=360&bih=560>

22. <https://www.google.co.in/search?client=ms-android-vivo&q=lee+v+lee%27s+air+farming+Ltd&sa=X&ved=2ahUKewjhxOGonbTbAhWKvo8KHcv9BrIQ1QIoAXoECAkQAg&biw=360&bih=560> [

