The Chittagong University Journal of Law
Vol. XIV, 2009 (p.129-151)

The Concept of Piercing the Corporate Veil in Corporate Law: A Critical Analysis

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Abstract

The act of piercing the corporate veil until now remains one of the most controversial subjects in corporate law and it would continue to remain so, even for the years to come. The doctrine of piercing the corporate veil remains only an exceptional act orchestrated by courts of law. Courts are most prepared to respect the rule of corporate personality, that a company is a separate legal entity from its shareholders, having its own rights and can sue and be sued in its own name. Nonetheless, there are general categories such as fraud, agency, sham or façade, unfairness and group enterprises; which are believed to be the basis under which courts (both Common Law Courts and Bangladeshi Law Courts) would pierce the corporate veil. But these categories are just a guideline and by no means far from being exhaustive.

Introduction

In English jurisdiction incorporation by registration was introduced in 1844 and the doctrine of limited liability followed in 1855.Subsequently in 1897 in *Solomon v Solomon & Company*[1] the House of Lords effected these enactments and cemented into English Law the twin concepts of 'corporate entity' and 'limited liability'. In that case the apex court simply laid down that a company is a distinct legal person entirely different from the

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[1] 1897 , A. C .622

members of that company.[2] Our Appellate Division has observed in *Punjab Ali v Mokarram Hossain*[3] that a company is entirely different from its members whose interests are confined to their shares. A company is an artificial person and must act through some natural agent. The Board of Directors is created for the management of the company. An individual shareholder has no proprietary interest in the property of the company and his interest in the shareholding is not directly affected by the sale of property of the company and can not bring an action for setting aside a sale. Our Appellate Division has held in the case of *A.S.A. Nur v Registrar Joint Stock Companies*[4]that a company continues to have its separate existence even when number of members of the company is reduced below the legal minimum.

In the case of *Solomon v. Solomon & Co. Ltd*[5] Solomon was a boot and shoe manufacturer. He incorporated a limited company named Solomon & Co. Ltd. by fulfilling the requirement of seven subscribers as members and shareholders of the company and they were Solomon as managing director, his wife, four sons and daughter. Interestingly, in the course of business, Solomon was simultaneously, the company's principal shareholder and also it's principal debenture holder. So, on winding up after paying off to the debenture holder, nothing was left for the unsecured creditors and the claimant claimed that the Solomon Company never got an independent existence and it was in fact Solomon under another name. The incorporation was merely a sham or façade.

In the Court of Appeal Lopes LJ and Kay LJ described company as a myth and a fiction and also said that the incorporation of the

[2] Anusya Sadhu. "Lifting of the Corporate veil", Online Sources : Legal Service India.com
[3] 29DLR (S.C.)185
[4] 1981, BLD (AD)202
[5] 1897 , A. C .622

business enable Mr. Solomon to carry on his business as before but with limited liability. The House of Lords unanimously overturned the decision of Court of Appeal. The House of Lords including Lord Macnaghten and also Lord Halsbury held that the Companies Act 1862 did not provide any provisions regarding whether the subscribers should be independent of the majority shareholders. They also held that the company was properly constituted in law and it was not the function of judges to read into the statute limitation they themselves considered expedient.[6] It is thus to be concluded that the rights and obligations of the members of the company were limited to their share of the profits and capital invested and also at the same time they would not be entitled to benefits and responsibilities of the company on their personal capacity.

However, the decision of the House of Lords in Solomon case evinces the accuracy of Gooley's observation that the separate legal entity doctrine was a 'two edged sword'[7]At a general level, it was a good decision by establishing that corporations are separate legal entities, Solomon case endowed the company with all the requisite attributes with which to become the powerhouse of capitalism. And by the concept of the limited liability, the shareholders are liable to the extent of their shares. At a particular level, however, it was a bad decision. By extending the benefits of incorporation to small private enterprises, Solomon case has promoted fraud and the evasion of legal obligations.[8]

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[6] http://en.wikipedia.org/wiki/Salomon_v_A_Salomon_%26_Co_Ltd

[7] John Gooley , "Corporations and Association Law : Principles and Issues"(3rd ed. Butterworth, Sydney), 1995

[8] Gonzalo Villata Puig,"A Two Edged Sword : Solomon and the Separate Legal Entity Doctrine", Subject-Corporation Law:Issue:volume – 7, Number 3, September 2000

But the courts have not always applied the principle laid down in Solomon case. The courts can lift the veil. The precise scope of the court's power in this respect has not been articulated[9].Various attempts have been made to classify the courts decisions whether to 'lift the veil' of incorporation in this way[10] but commentators are generally agreed that the cases disclose no very obvious pattern and it remains hard to predict when the courts will lift the veil in practice.[11]One reason for this is the court's declination to describe a set of principles by reference to which their decisions on the point should be taken; they would prefer to reserve discretion to themselves to judge each on its merits.[12]Again the courts have often used compulsory terms to express their decisions on the point, which for all their vividness tell us nothing about the reasoning which underpins these decisions.[13]

However, though the court is not very likelier to lift the veil of incorporation or very reluctant to lift the veil of incorporation, in a number of circumstances the court will pierce the corporate veil or will ignore the corporate veil to reach the person behind the veil or reveal the true form and character of the concerned company. The rationale behind this is probably that the law will not allow the corporate form to be misused or for the purposes which is set out in the statute. In those circumstances in which the court feels that the corporate forms are being misused, it will rip through the corporate veil and expose its true character and nature disregarding the Solomon principle as laid down by the House of Lords.[14]And

[9] Ottolenghis, 'From Peeping Behind the Corporate Veil to Ignoring it Completely'1990,53MLR,338
[10] ibid
[11] G.Morse et al (eds) Pulmer's Company Law, 25th ed (London,1992) and Supps Paras 2.15-19-2.1522
[12] Wates Building Group Ltd. V Jones (1996)59,Con,LR,19,103
[13] Pickering,1968,31MLR,481-482
[14] See supra note 3

this has been done both in Common Law practices and also in Bangladesh practices.

In this paper, to understand clearly what is 'lifting of corporate veil' we will first see the significance of the Solomon case which first establishes the principles of 'limited liability' and the 'veil doctrine as derivative from the principle of separate legal personality'. The purpose of this paper is to examine the attitudes of English Courts towards the lifting of corporate veil or to the application of principle whether they are likelier to lift the veil or not and what they will consider as the basis for lifting of the veil of incorporation as evidenced by the outcome of individual decisions.

And in this paper we will examine the English Court's likeliness or reluctance to lifting the veil of incorporation through two perspectives:

- Under judicial interpretation
- Under expressed statutory provisions.

Here for critical analysis of lifting the corporate veil we will also consider the Bangladeshi laws in relevant field. As English Law is more developed and more exhaustive in company law than Bangladesh Law and in certain circumstances, Bangladeshi courts follow the decisions of English courts, for which, in this paper, we have given emphasis on English Law perspective regarding the topic. Nonetheless, this paper will reveal that the overall balance is positive.

Significance of the *Solomon Case*

The *Solomon case* has established that by incorporation a company is usually considered to be a new legal entity separate from its shareholders. The specific significance of this case is thus:

- A company after incorporation will be considered as a legal personality or a juristic entity that has a separate or distinct identity from that of its owners or members, shareholders and it's further empowered with its own rights duties and obligations can in its own name sue and be sued.[15]
- The case also established that shareholders under common law are not liable to the company's debts beyond their initial capital investment and have no proprietary interest in the property of the company.[16]

There are different cases where the ruling established by the Solomon case has been followed. This case is both the foundational case and precedence for the doctrine of corporate personality and the judicial guide for lifting the corporate veil. At its most particular level, however, the decision of the House of Lords in *Salomon v Salomon & Co Ltd* was not a good decision. Professor Kahn-Freund went so far as to describe it as "calamitous".[17]*Salomon's case* established the independent corporate existence of a registered company, a principle of the greatest importance in company law.[18] But if applied inflexibly, as was the case in Salomon, it can shield parties unreasonably, to the detriment of persons dealing with companies.[19]

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[15] Amin George Forji, "The Veil Doctrine in Company Law" published on September 28,2007

[16] Ramsey M.Ian & David B. Noakes, "Piercing the Corporate Veil in Australia" Melbourne University Press,2005,Paper for the Melbourne Centre for Corporate Law and Securities Regulation,4

[17] Otto Kahn-Freund, "Some Reflections on Company Law Reform" (1944) 7 The Modern Law Review 54.

[18] Geoffrey Morse, Charlesworth & Morse: Company Law (14th ed, Sweet & Maxwell/Stevens, London, 1991), p 26

[19] H Leigh Ffrench, Guide to Corporations Act (4th ed, Butterworths, Sydney, 1994), p 1

As noted in the Law Quarterly Review, *Solomon's case* was not about "a dry point of construction".[20]The House of Lords had sanctioned a change in ideas about what the company was and about the uses to which it could be put.[21] It gave priority to the separate identity of the legal form and essentially ignored the economic reality of a one-person company.[22]Basically, Goulding explains, the reason for criticism of *Salomon's case* is two-fold.[23] First, the decision gives even apparently honest incorporators the benefit of limited liability in circumstances in which it is not necessary in order to encourage them to initiate or carry on their trade or business. Second, the opportunities that the decision affords to unscrupulous promoters of private companies to abuse the advantages that the Corporations Act gives them by achieving a "wafer-thin" incorporation of an undercapitalized company.[24] And for this the doctrine of 'lifting the corporate veil' has come into existence, one of the primary methods through which the courts mitigate the strenuous demands of the logical fulfillment of the separate legal personality concept.[25]

Piercing the Corporate Veil

The concept of piercing the corporate veil is that where a court disregards the existence of the corporation on the failure of the owners to keep one or more corporate requirements and formalities. It is more or less a judicial act[26]and Young J. in

[20] Note, (1897) 10 The Law Quarterly Review 6.
[21] Roman Tomasic, James Jackson, and Robin Woellner, Corporation Law: Principles, Policy and Process (2nd ed, Butterworths, Sydney, 1992), p 38
[22]Ibid,p-97
[23] Simon Goulding, Principles of Company Law (Cavendish Publishing Limited, London, 1996), p 49
[24] Supra note 9
[25] Supra note 16
[26] Supra note 17

Pioneer Concrete Services Ltd. V Yelvah Pty Ltd.[27]on his part defined lifting of corporate veil is that although whenever each individual company is formed a separate legal personality, courts will on occasions, look behind the legal personality to the real controllers. In brief, the concept of lifting the corporate veil is the direct opposite of the principle of limited liability. When the veil of incorporation is lifted, the owner's personal assets are exposed to the litigation just as if the business had been a sole proprietorship or general partnership. The courts have all exclusive jurisdictions to lift or look beyond the corporate veil at any time they want to examine the operating mechanism behind a company.[28]

Therefore, piercing the corporate veil can be described as a legal decision where a shareholder or director is held liable for the liabilities of the corporation despite the general principle that shareholders are immune from suits. This concept is also known as "disregarding the corporate entity".[29]

Basis for piercing the veil

Generally, in determining whether or not the corporate veil may be pierced, the courts are required to use the laws of the corporation's home state. This issue can be significant, for example, the rules for allowing a corporate veil to be pierced are much more liberal in California than they are in Nevada, thus the owner of a corporation operating in California would be subject to different potential for the corporation's veil to be pierced if the corporation was to be sued, depending on whether the corporation was a California domestic corporation or was a Nevada foreign corporation operating in California.

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[27] 1986,5NSWLR,254(SCNSW)
[28] H.A.J.Ford, R P Austin and I M Ramsay, Ford's Principles of Corporations Law, 9th ed, 1999
[29] http://en.wikipedia.org/wiki/Piercing_the_corporate_veil"

For lifting the veil of incorporation the plaintiff has to prove that the incorporation was merely a formality and the corporation neglected corporate formalities and protocols, such as voting to approve major corporate actions in the context of a duly authorized corporate meeting. This is quite often the case, when a corporation facing legal liability transfers its assets and business to another corporation with the same management and shareholders. It also happens with the single person corporations that are managed in a haphazard manner. As such, the veil can be pierced in both civil cases and where regulatory proceedings are taken against a shell corporation.

So, when the veil of incorporation is lifted, judges proceed to treat the members as the owners of the company's assets as if they were conducting the company's business in their personal capacities, or the court may attribute rights or obligations of the members of the company. In the case of *Briggs v James Hardie & co. Pty*[30] thus: "There is no common, unifying principle which underlies the occasional decision of the courts to pierce the veil. Although an ad hoc explanation may be offered by a court which so decides, there is no principled approach to be derived from the authorities".

In a nutshell, Common Law Courts have ever since the Solomon case recognized a number of discrete factors that would prompt them to pierce the corporate veil. The most outstanding factors would be examined there under:

- Fraud
- Agency
- Unfairness
- Group Enterprises
- Sham or Façade

[30] 1989,16 NSWLR 549

- Trust
- Tort
- Enemy Character
- Tax

Fraud

English courts would allege fraud where the owners of a corporation merely used it as a window dressing to evade either fiduciary or legal obligations. This was the fact in issue in the case of *Re Edelsten ex parte Donnelly*[31]even though the court could not ascertain fraud on a company owner who had apparently denied his obligations towards his creditors on the grounds of limited liability. And it was argued in this case whether the company is allowed to incorporate first and then to use the title for the purpose of evading the legal obligation. But the court found that the incorporation had been used to perpetrate a fraud and the court ruled it as shams. Under no circumstances, the court will allow the abuse of the corporate form and when such abuse occurs the courts will step in and three things are taken into consideration by judges generally-

I. What are the motives of the fraudulent person relevant?
II. Is the character of the legal obligation being evaded relevant?
III. Is the timing of the incorporation of the device company relevant?[32]

[31] Unreported, Federal Court,Northop j, 11 September 1992
[32] J Payne, "Lifting the Corporate Veil : A Reassessment of the Fraud Exception"1997,56,Cambridge Law Journal 284

Agency

In Solomon's case Justice Vaughan Williams expressed that the company was nothing but an agent of Solomon. But the House of Lords held that a company did not automatically become an agent of the shareholder even if it was a one man company and other shareholders are dummies. Thus, a company can act as an agent of its parent company or indeed for all or any of the individual members only if there is an express agreement of such relationship. And then the parent company or the members will be bound by the acts of its agents so long as those acts are within actual or apparent scope of the authority. A company is a legal entity with a different identity from that of its members means that a company does not exist to become an agent for its shareholders and if it happens otherwise, common law courts would not hesitate to pierce the corporate veil. Rowland J. in *Barrow v CSR.Ltd*[33]where the court found out that a parent company was responsible for the actions of a subsidiary in relation to an employee; it did not hesitate to lift the veil. In the case of *Smith, Stone & Knight Ltd v Birmingham Corporation*[34] the court asked the question whether a particular subsidiary company was carrying on the parent company's business or its own. Six points were made by them and these have been adopted in subsequent cases. The considerations are as follows :

1. Were the profits treated as those of the parent company?
2. Were the persons conducting the business of the subsidiary appointed by the parent company?
3. Was the parent company the "head and brains" of the trading venture?
4. Did the parent company govern the adventure?

[33] Unreported, 4 August , 1988, Supreme Court of Western Australia.
[34] 1939, 4 All, E.R. 116

5. Were the profits made by the subsidiary company made by the skill and direction of the parent company?
6. Was the parent company in effective and constant control of the subsidiary?

Another decisive factor is whether the subsidiary company is undercapitalized for the carrying on of an independent existence. Some commentators have pointed out that to solve this problem there will have to be group accounts, this presumably satisfying the first criterion, and the remaining criteria will be satisfied at any rate where boards of directors or managing director of parent and subsidiary are the same**.**

Unfairness

One other serious ground under which Common Law Courts would be so ready to pierce the corporate veil is in cases where unfairness on the part of the company in question. The plaintiff company may, for example, pray the court to pierce the corporate veil on the basis that doing so would help bring a fair and just result. Such was the case of *RMS Glazing Pty Ltd. V The Proprietors of Strata Plan No 1442*[35], where a body corporate bringing in an action against a defendant company argued that the veil be pierced because it's Managing Director, Mr. Lo Surdo had played a very active role in the court proceedings and would normally not have done so if the company was in effect not just a 'body of straw'.

The court in the pronouncement of Cole J. rejected this argument, finding that with the company's record of profitable trading it could not be said to be a body of straw. Cole J. said thus "Quite apart from that I am not satisfied that justice would require the

[35] Unreported, Supreme Court of New South Wales, Cole j, 17 December, 1993

making of such an order. The body corporate dealt with RMS over a period of more than a decade. It was prepared to deal with the company rather than Mr. Lo Surdo personally and to enter into contractual relationships with the company resulting in the payment of many millions of dollars. I do not think that the interest of justice requires that it now be permitted to simply disregard the corporate veil". That means the courts also take into consideration the interests of justice for lifting the corporate veil.

Group Enterprises

The argument of group enterprises is to the effect that in certain cases, some companies that act as a corporate group may operate to hide behind the advantages of limited liability to the disadvantage of their creditors. They may operate in a way that the parent entity is not clearly distinguishable from the subsidiaries. The argument in favor of piercing the corporate veil in these situations is to ensure that a corporate group which seeks the advantages of limited liability must also be ready to accept the corresponding responsibilities.[36] And the most exceptional instance where Anglo Saxon Court pierced the corporate veil on the basis of group enterprises is where there exists a sufficient degree of common ownership and common enterprise. The Lord Justices identified the group enterprises as the main ground for lifting the corporate veil by Anglo Saxon Court in the case of *Bluecrop Pty Ltd. v. ANZ Executors and Trustee Co. Ltd*[37]

Sham or Facade

A company was merely a sham or façade means the corporate form was incorporated or merely used as a mask to hide the real purpose of the corporate controller. In the case of *Sharrment Pty Ltd. V*

[36] Doyle CJ Taylor v Santos Ltd. Corporate Law Electronic Bulletin , No 13, September 1998
[37] 1995, 18 ACSR , 566

Official Trustee in Bankruptcy[38] Lockhart J stated that "A sham is something that is intended to be mistaken for something else or that is not really what it purports to be…….It is not genuine or true but something made in imitation of something else or made to appear to be something which it is not. It is something which is false or deceptive."

Trust

The court may pierce the corporate veil to look at the characteristics of the shareholders. In the case of *Abbey Malvern Wells Ltd. V Minister of Local Government and Planning*[39]the court lifted the corporate veil. In this case a school was running a life company but the shares were held by trustees on educational charitable trusts. They pierced the veil in order to look into the terms on which the trustee held the shares. That means the court imposed the terms of trust on company's property and thus looked beyond the incorporation.

Tort

A finding of tortious liability against a member usually he is also a director for activities carried out through the medium of a company has the possibility of negating the Solomon principle. The courts have increasingly been faced with this possibility. The leading case on this issue is *Williams v. Natuaral Life Health Foods Ltd*[40]. Here the House of Lords emphasized the Solomon Principle in the context of negligent misstatement claim. In its judgment the House of Lords considered that a Director or employee of a company could only be personally liable for negligent misstatement if there was reasonable reliance by the claimant on an assumption of personal responsibility by the Director so as to create a special

[38] Unreported; Federal Court 3rd June,1988
[39] 1951.ch278 (High Court)
[40] 1998, 2 All E.R. 277

relationship between them. In particular circumstances a parent company may be jointly liable in tort with a subsidiary, or sister subsidiaries may be joint tort feasors.[41] Thus the court considers that any director or employee of a company could only be liable for negligent misstatement if there was reasonable reliance of personal responsibility by the director so as to create a special relationship between the director and the claimant.

Enemy Character

Occasionally it becomes necessary to determine the character of a company, for example, to see whether it is 'enemy'. In such a case, the courts may in their discretion, examine the character of persons in real control of the corporate affairs.In the case of *Dailmer Co. Ltd. V Continental Tyres & Rubber Co*[42] A company was incorporated in England for the purpose of selling the tyres manufactured in Germany by a German Company. The German Company held the bulk of shares in the English Company. The holders of the remaining shares (save one) and all the directors were German, residents in Germany. Thus the real control of the English Company was in German hands. During the First World War, the English company commenced an action to recover a trade debt and the question was whether the company had become an enemy company and should, therefore, be barred from maintaining action. In this case the House of Lords concluded, "……..But it may assume an enemy character when persons in de facto control of its affairs, are residents in enemy country or, wherever resident, are acting under the control of enemies." So, for public policy corporate veil can be lifted.[43]

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[41] Eillies Ferran "Company Law and Corporate Finance Law"(First Indian Edition 2003) Published by Oxford University Press, 1999.p-36

[42] 1916,2 AC 307

[43] Dr. Avter Singh, 'Company Law' Seventh Edition , 1982, Eastern Book Company,pp-9-10

Tax

The court has the power to disregard corporate entity if it is used for tax evasion or to circumvent tax obligation.[44] A clear illustration of this is to be found in the facts of *In re Sir Dinshaw Maneckjee Petit.*[45] The assess was a wealthy man enjoying huge dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income in four parts in a bid to reduce his tax liability. But it was held that the company was formed by the assess purely and simply as a means of avoiding super tax and the company was nothing more than the assess himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assess as pretended loans.

The leading English authority is *Apthrope v Peter Schoenhofen Brewing Co.*[46] Aliens were not allowed to hold land in New York. An English company acquired the business and assets of a New York company. But the American company was kept on foot to hold the land. The business was financed and run by the English company. It was held that the American company had become the agent of the English company and therefore, the whole of its profits were liable to be taxed as the income of the English company. Subsequently, however, the courts have been more cautious.[47]

[44] Juggilal v C.I.T. (1969)2Scc,376
[45] AIR,1927, BOM 371
[46] 1899 4TC 41:80 LT 395 (CA)
[47] Kodak v Clark (1903)1 KB 505 (CA)

Statutory Support of Lifting the Corporate Veil under English Law:

Reduction of Number of Members

Under section 24 of the Companies Act 1985 if a public company carries on business for more than 6 months may become liable jointly and severally with the company for the payment of debts, the rights which this section confers on creditors is limited. It is only that member who remains after 6 months that can be sued.

Section 213, Insolvency Act 1986 of UK

Section 213 of the Insolvency Act, 1986 was designed to deal with situations where the corporate form was used as vehicle for fraud. It is known as the 'fraudulent trading' provision. If in the course of the winding up of a company it appears to the court that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, those individuals can be called upon to contribute to the debts of the company and this was happened in the case of *Re Todd Ltd*.[48]and *Re Patrick & Lyon Ltd*.[49]

Section 214, Insolvency Act 1986 of UK

The section operates on the basis that at some time before the company entered insolvent liquidation there will have been a point where the directors knew it was hopeless and the company could not trade out of the situation. The reasonable director would not at this point continue to trade. If he does continue to trade he risks having to contribute to the debts of the company under section 214. The limitation of s.214 of the Insolvency Act, 1986 is that it only applies to the directors of the failed company. Directors for this

[48] 1990, BCLC,454
[49] 1933, Ch 786

purpose include shadow directors,[50]that is , persons on whose instructions or directions the actual directors are accustomed to act.[51]

Abuse of Company Names or Employment of Disqualified directors

Section 216 of the Insolvency Act now makes it an offence for anyone who was a director or a shadow director of the original company at any time during the 12 months preceding its going into insolvent liquidation to be in any way concerned (except with leave of court) during the next five years in the formation, management of a company or business with a name by which the original company was known one so similar as to suggest an association with that company.

A person acting in violation of 216 is under 217 personally liable, jointly and severally with that company and any other person so liable, for the debts and other liabilities of that company incurred while he was concerned in its management and breach of section 216

Wrong description of the Company

Section 349(4) of the Companies Act 1985 provides that if any officer of the company or other person acting on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the companies name is not mentioned in legible letters. He is liable to a fine and he is personally liable to the holder of such as mentioned above.

[50] And also de facto directors, i.e. persons who are not formally appointed as directors but who function as such : Re Hydrodan (corby) Ltd. 1994, BCC, 161
[51] Section 251, 1986.

Premature Trading

Another example of personal liability is section 117(8).Under this section, a public limited company newly incorporated as such must not "do business or exercise any borrowing power" until it has obtained from the registrar of companies a certificate that has complied with the provisions of the act relating to the raising of the prescribed share capital or until it has re-registered as a private company.

If it enters into any transaction contrary to this provision not only are the company and its officers in default, liable to pay fines but if the company fails to comply with its obligations in that connection within 21 days of being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party in respect of any loss or damage suffered by reason of the company's failure.

Lifting of Corporate Veil under Statutory Support of Bangladesh Law

The following instances may be set under express statutory provisions where the court lifts the corporate veil:

a) **Reduction of Members Below the Statutory Minimum**

When the number of members is less than the required number as provided by law and carried on business for a period more than 6 months by that minimum members, shall be liable for all debts of the company contracted after the period of 6 months. So, we see that under section 222 of the Company Act 1994 the creditors are allowed to look behind the corporate veil to see the number of members.

b) **Publication of Name by a Limited Company & Penalties for Non-Publication of Name**

Section 78 of the Act of 1994 requires a company to display in front of its office its name and registered address and also shows its name on its seal, bill heads, notice and advertisements etc. Section 79 provides that if a company which defaults in complying with the provision of section 78, every officer who was knowingly and willingly approved of the default, will be liable to penalty and personally responsible for any debt of the company contracted on the bill heads, etc.

c) **Limited Company may have Directors with Unlimited Liability**

Section 75 of the Act provides that in a limited company the liability of the directors or of any director may, if so provided by the memorandum be unlimited. If a director holds any office then his liability may also be unlimited as an officer of the company, if he is a director whose liability is unlimited. Even if the memorandum does not provide for the liability of a director to be unlimited, a limited company if so authorized by its articles may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors.

d) **Balance Sheet of Holding Company to Include Certain Particulars as to its Subsidiaries**

Section 186 of the Act of 1994 requires a holding company to attach with its balance sheet the auditors report, profit and loss account and certain other information of its subsidiaries. The statute thus seeks to publish a broad picture of the entire group and ignore the separate legal entity of the subsidiaries.

e) **In Case of an Investigation of the Affairs of the Company**

Under section 199 of the Companies Act 1994 an inspector appointed for the purpose of investigating the affairs of a company shall have the power to investigate the affairs of some other companies, if necessary. So, the corporate veil may be lifted.

f) **In Case of an Investigation of the Ownership of a Company**

If the government satisfies, it may appoint one or more inspectors under Ss-195,197 and 199 for the purpose of (1) determining who are the real owners; (2) who are financially interest in company; (3) who holds the controlling power on the management of the company etc. The inspector, for investigating the above matters, may look behind the corporate veil.

g) **Fraudulent Trading**

Under Section 259 in the event of winding up if appears that the business had been carried on fraudulently to defraud the official liquidator or any creditor the court may find the real personality controlled the business and hold him liable.

h) **Wrong Description of the Companies**

S.225 provides for the authentication of documents. The mandate of law is that in all the documents of the transaction, the name of the company shall be mentioned specifically. If any director or any person enters into contract with third party without referring the name of the company shall be personally liable. Thus, on the application of aggrieved person the court may lift the corporate veil.

i) **Prohibition of Fraudulent Acts etc. & Prohibition of False Statements etc.**

Section 17 of SEO, 1969 contains prohibitions of fraud in sale of securities and manipulation of share prices. It also contains prohibitions against false statements in any document, paper, accounts information or explanation which is material. If any person is in such position that he can know the current information of the share price or any other statement about any document or paper which is material and in these circumstances, if he for the purpose of defeating the creditors sales the shares or for any other fraudulent purpose gives misinformation or any false statement in any document, paper, accounts information or explanation, the court may lift the corporate veil, in this situation , to punish the director or the employee who is related in this fraudulent acts or false statements.

j) **Restriction on Compromise or Arrangement Between Banking Company and Creditors**

When Bank Company becomes bankrupt, there is no process of voluntary winding up under s 76 of the Bank Companies Act, 1991**.** It can be done only compulsorily. If the creditor can prove that in order to defeat creditors, the bank company transfers its property, that transfer will be treated as invalid transfer and the court may lift the veil of incorporation, in this circumstance, in order to stop the illegal transaction.

k) **Act of Bankruptcy**

Under s 9 of the Bankruptcy Act &Rules, 1997 if a person who is unable to pay his creditor, transfers his property or any part thereof with intent to defeat or delay his creditors, without receiving reasonable value thereof that act will be treated as the act of bankruptcy. And this act will be considered as the cause of action for lifting the corporate veil.

Conclusion:

By undertaking the above study, we see that, by incorporation a company wears a 'corporate veil' by which it becomes a separate legal entity, different from its shareholders, can sue and be sued in its own name. As a consequence of Solomon's case by incorporation shareholders are liable to their shares only but not others and courts are very likelier to follow it.

But from time to time it has been seen in different cases that the courts have not applied the principle of separate legal entity to look behind the corporate veil where any person or persons use the corporate veil as a mask, sham or façade to hide the real fraudulent purpose. As well the courts, that by statutory support, legislature takes measures to avoid the corporate veil. But we have also seen in this paper that courts are also very reluctant to demonstrate the underlying principles on the basis of which they lift the corporate veil.

Nevertheless, we have discussed in this paper that courts do not hesitate to lift the veil where they found sham or façade, agency, fraud , unfairness, group enterprises and so others. Side by side, we have also seen the statutory supports under both English and Bangladeshi Law. But the aim of the two is same, to do justice to all the parties, so that no one can use the corporate personality as a cloak for fraud. For this the sphere of lifting of corporate veil is expanding day by day though the courts are very strict to follow the corporate personality. So, we can not predict the instances where and when the court and statute will lift the veil but we can only say that it is wholly based on fair policy and justice. And the only motive of the court and statute to establish equitable jurisdiction. So, it can be concluded that the overall balance is positive.