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IS CORPORATE VEIL AN IMPEDIMENT AGAINST MONEY LAUNDERING?

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ABSTRACT

In order to establish a connection between the unlawful concealment of money and piercing the veil, the paper attempts to resolve the complexities and refine the idea of Corporate Veil. Through the case of Adams Vs. Cape Industries Plc which stated that corporations exploit the corporate forms to dodge the wicked crimes perpetrated by the, the common law concept of piercing the veil was incorporated in the late 1900s. Additionally, corporation avoid legal liability by doing this. The crime of obtaining money by corruption or other means is money laundering. Such acts fall under the corporate veil concept when they are committed by a corporate entity to avoid legal repercussions. This paper will discuss the tactics used by companies to wield this theory as a weapon. It also highlights the struggle the courts have in raising the curtain. In order to put forth, the articles present some recent case laws. Additionally, it makes an effort to connect the links by highlighting the reasoning behind a corporation through significant rulings and suggests the potential courses of action to stop such crimes.

INTRODUCTION

The English Companies Act of 1844 introduced the long-standing idea of forming a company. The Joint Stock Companies Act of 1850 was a result of the appreciation and recognition of this concept. Prior to the Companies Act of 2013, the Act was amended twenty-five times. The Latin words "panis," which means bread, and "com," which means together, are the sources of the English word "company," which suggests a partnership between two or more individuals who eat food and talk business over bread. The corporate veil is a notion that is incorporated into the law and holds that a company is a separate legal body with many characteristics, including common seal and everlasting succession.

The ability to sue and be sued is given upon an artificial person. However, the essential query that runs across the entire study is: Under what conditions might this curtain be raised? Salomon v. Salomon and Co Ltd is a seminal case involving a footwear business owned by Mr. Salomon that he later restructured into a limited liability corporation with a £40,000 shareholding. There

were seven subscribers in all, including Salomon, his wife, four boys, and one daughter. Following the company's liquidation, the liability of the unsecured creditors was £ 7,000. The ruling addressed the pertinent questions raised by the business, including whether or not the limited liability company was formed with the goal to deceive its creditors and whether or not it is a legally recognised artificial person. Another concern raised was whether an individual operating under a company's name would be held liable and accountable for covering the debts. The court decided that a business is assumed to be a distinct legal entity at the time of its establishment. Salomon is a distinct debenture holder and would have precedence over the creditors, thus he cannot be held accountable in this situation. It is not possible to say that he committed fraud in this instance. Certain share classes have the right to dividends based on the amount subscribed for them. The priority of a debenture holder is higher than that of an unsecured creditor. In contrast, the court rendered its decision in the Vodafone International Holdings BV v. Union of India case after penetrating the veil. Over the years, Vodafone, a telecom firm, gained recognition in India for its services. The idea that capital gains weren't covered by the tax collection method when transactions were made between two non-resident establishments was prevalent during the Voda era. The Bombay High Court further disputed the Income Tax Authority's ruling, concluding that a considerable controlling interest was involved in the transaction between the two massive telecom companies. Additionally, it demonstrated a plausible connection between the action and the claim in cases where the capital assets originated in India; as a result, Section 195 of the Income Tax Act will apply to non-resident firms when it comes to deductions. Despite the Supreme Court's decision in favour of the telecom behemoth, the Chief Justice at the time expressed the opinion that removing the corporate veil is a crucial step in identifying the wrongdoer. An organisation is a collection of real people, and those real individuals are the ones who carry out the actual work. Therefore, when an employee of that specific corporation commits a crime, the company's existence alone should not be cited as justification for the accused's release. The following paper will concentrate on the aspect of corporate fraud that gave rise to instances of money laundering.

THE PURPOSE OF STUDY

The purpose of this study is to determine whether corporate forms of business are significantly related, with the separate entity serving as a cloak to support the improper goal. Even though "Mens Rea" is clearly present in these situations, the offender is protected by the corporate veil statutes. The paper covers several aspects of the theory to counter such fraudulent conduct.

THE ORIGIN OF THE FALLING BLOCK: MONEY

Even if money is simply a piece of paper, it matters to the entire cosmos. It serves as a medium for consideration, acquisition, exchange, or sale of products and/or services. In today's world, we recognise the need of paying consultation fees when hiring a doctor or lawyer, or using a piece of paper to purchase a plot of property. However, are we making ends meet with that meagre note?

It was revealed in recent headlines that medical professionals, IVF centres, and hospitals were suspected of being complicit in child trafficking. The following statement provides more clarity on the solution to the question above. Human trafficking is a crime for which the Penal Code's Section 370 imposes a seven-year prison sentence. Gluttony drives people to commit such horrible acts, even if the Indian legal system lists these prohibitions. A coin does, in fact, have two sides, as this instance effectively demonstrates. Greed is another factor that influences money laundering, a sophisticated crime.

INTERPRETATION OF MONEY LAUNDERING

It is possible to characterise this as a crime involving the element "money." One is considered to have engaged in this crime if they participate in any of the following four activities: concealment (where a party is involved in the act of concealing money; for instance, Mr. X may have hidden Rs. 70,000 from the company's locker). Possession (where a party is involved in having ownership of the element specified in the provision).

Acquisition/Use: The money is acquired through personal effort, even if it does not belong to any one person. For instance, Mr. P purchases and becomes the owner of a flat. The flat that Mr P bought is mistakenly occupied by Mr Q. The flat has been wrongfully possessed by Mr Q. (Even though the terms "possession" and "acquisition" sound similar, there is a subtle distinction between them. In this instance, "acquire" refers to obtaining legal ownership of the object, whereas "possess" refers to having or asserting physical authority over the object.)

Project or Claim an Untainted Property: To falsely represent a specific piece of property as one's own. Another way to define this would be as a continual process. The individual need not necessarily be connected to it directly. Each person who assisted in the offence will be held equally accountable. Section 4 of the Prevention of Money Laundering Act, 2002 lists the penalties for the offence.

MONEY LAUNDERING: A TECHNIQUE OF EVADING TAXES

Since this case satisfies every need set forth by the Financial Action Task Force for the sophisticated crime of money laundering, it may be said that money laundering includes tax evasion. Adopting the FATF Recommendation is an international norm that nations should follow in order to tackle issues like money laundering. The goal of the launderers' systematic attempts to carry out these kinds of activities is to protect themselves from liability and tax payment. The following are the steps: -

Step 1: Cash Introduction

When an accused party enters the finance market with unapproved funds, the first step automatically establishes the offence; it aims to conceal, possess, acquire, or claim profit in a bank located within the Indian Territory.

Step 2: Divide The Unlawful Funds

When a sizable sum is deposited in a territorial bank, the specific bank frequently follows up to ensure that the transaction was authorised. Thus, the con artists divided the large cash into smaller amounts.

Step 3: Determine How to Use the Divided Cash.

The depositor chooses how to use the divided funds: by making direct deposits in a domestic bank or cross-border institutions, buying assets, or using any other method they see fit.\

Step 4: Procter Multiplex Layering

Several anonymous transactions are conducted to make the computation even more difficult in an attempt to deceive the Income Tax Authorities.

Step 5: Pumping the Illegal Money

This crucial stage is carried out in all money laundering sequences when cash is later reintroduced into the economy to confer credibility on financial transactions.

The nuances of the doctrine will be covered in the next part.

EXPLORING THE CORPORATE VEIL DOCTRINE

The Latin word velum, which meaning to conceal or protect, is where the word "veil" first appeared. This term was originally intended to refer to a face-covering garment used by ladies, but in more recent years, it has gained use in the business sector.

According to the Companies Act of 2013, Section 2(20), a company is a legal establishment. A business can be divided into a number of broad groups based on factors such as ownership, obligations, and controlling power. Depending on what suits them best, many entrepreneurs select different company models. There is a chance that corporations will get into liabilities from the transactions after deciding on a company structure and incorporating in accordance with the Act's or any prior companies Act's rules. These obligations, which are further divided into current and non-current obligations, can take many various shapes, including:

Liability that results from investing in an asset. As an illustration, PQR Ltd used \$5,000 of its company capital to purchase machinery for use in its operations. The current liabilities incurred by the organisation is INR 5,00,000. One type of a company's liability is the payment of taxes. Many businesses attempt to avoid paying taxes, which is illegal. A loan obtained by a business for the purpose of cooperation or any unpaid interest. current obligations, such as salary and wage payments.

The lists of liabilities are not all-inclusive, and the concept of the corporate veil was first applied in situations where obligations arose from unforeseen events that occurred during business operations. A company's stakeholders, stockholders, and employees can work hard without worrying about discomfort or stress. This doctrine guarantees a reduction in the burden of liability up to the amount they have pledged. It guarantees the owners' safety under any conditions when the business is first established.

ANATOMY OF THE DOCTRINE

Certain owners exploit the theory to their advantage in order to avoid being caught by the law. They incorporate the businesses in order to take advantage of them and commit fraud in order to make money. The provisions intended to penalise wrongdoers through statutory lift were effectively applied by the latest modification to the Companies Act. Among the clauses that have been listed are:

1. Criminal and Civil Liability for Prospectus Misstatement

A prospectus that is released by a publicly traded firm or a promoter with a stake in the venture must abide by all Act requirements. The attestation and date are required by the Promoter or the individual who is interested in this engagement. It must also state that the relevant provisions have been followed. Section 34 of the Act establishes criminal

accountability and Section 35 establishes civil liability in situations where the provisions of Section 26 of the Act are flagrantly broken. It also lists the penalties for the harm caused by this kind of false statement.

2. *Illegally obtain financial gains*

Only when the appropriate process is followed, as specified by Section 73 of the act, can deposits be received. This requires the company to have a general meeting and adopt a resolution before accepting a deposit. A few prerequisites must be met first, such as the distribution of a notice outlining the company's financial situation and credit rating. Within thirty days of the notice being circulated, the Registrar should be notified of the same. Punishment under Section 76A results from failure to comply with Sections 73 and 76.

3. *The Scrutiny Procedure*

In situations where the Central Government designates an officer to investigate a financial concern in order to identify the company's owner, Section 216 takes effect.

4. *Embezzlement during winding-up*

In situations when a company is established solely for the intention of deceiving investors and misappropriating funds, Section 339 of the Act imposes penalties that may include imprisonment, a fine, or both. Section 447 lists the penalties for violating Section 339.

5. *Providing inaccurate information*

In accordance with Section 449, the party who fails to provide accurate information and evidence faces punishment of either a fine of rupees one hundred thousand or less, imprisonment for a maximum of six months, or both.

Courts can order the lifting of the corporate veil using this legislation. The goal of the next part is to draw a thin line of similarity between the two ideas that were covered in the previous ones.

THE RELATIONSHIP BETWEEN THE TWO CONCEPTS

The notions of Money Laundering and Piercing of Corporate Veil are closely related, as the former involves an individual committing an act under Section 3 of the Act and attempting to

evade punishment by utilising the Corporate Veil theory. In certain Indian circumstances, the doctrine's exception is applied to penalise the offender.

Big business magnate Vijay Mallya was the owner of Kingfisher Airlines, which was embroiled in the well-known scandal. Mr. Gopinath created Air Deccan in 2003, which the business acquired. However, the airline suffered significant losses as a result of its inability to maintain operating costs. In order to boost profits, the Kingfisher Company chose to acquire the Air Deccan airlines. However, because of the airline's declining marketability, the billionaire had to borrow a sizable sum of money from many banks in order to maintain control of the aircraft transport industry. However, the business experienced a heartbreaking loss in the ensuing years and failed to repay the loans, which totalled about Rs. 9000 crores. He deliberately avoided paying taxes by laundering money to foreign incorporations in order to get around such defaults. He enlisted the help of fictitious directors to transfer the borrowed funds. Money diversion occurred on multiple occasions. Sadly, the Serious Fraud Investigation Office, which was established in accordance with the Companies Act, 2013, looked into the Kingfisher Company's affairs and produced a report indicating the serious fraud that overpowered the corporate and financial sphere. The entire scam was orchestrated by using the corporate veil as a shield to protect the perpetrator. Despite being a part of a major scandal, he managed to avoid consequences by utilising a bail extradition warrant that was carried out by the Metropolitan Police Service in London. As a result, even though India has a vast legal system, it is evident that wrongdoers have skilfully slipped through the Corporate Veil.

Although one of the two brothers admitted to the scam and was punished, there was still another instance of money laundering involving an amount of Rs. 7,000 crores, which is well-known as the Satyam Scam. In this instance as well, the corporate veil was used as a weapon to manipulate the crime in order to deceive the general public. The two individuals that founded Satyam Computers Ltd. were B. Ramalinga Raju and Rama Raju. They had very few workers when they first started the business, and they were blood relatives. With time, their firm expanded internationally, and the company's net worth rose sharply. The greatest influence in the world is money, and this inspires people to achieve more than they have in the past. In an attempt to attract investors, the corporation began to manipulate the accounts. This serves as yet another illustration of how the corporate veil is a pernicious theory that protects the perpetrator.

The case of Chanda Deepak Kochhar v. ICICI Bank Ltd and Ors. concerns money laundering, as

it involves Ms. Kochhar, the former CEO of ICICI Bank, and her husband, Mr. Deepak Kochhar, the CEO of NuPower Renewables, engaging in questionable activities. Investigating the corporate swindle in which the husband and wife participated in the loan transfer between the two companies was the task assigned to the investigating agencies. The manifestation of nepotism was strikingly apparent in the situation where Ms. Chanda sought to gain an unfair advantage via the Videocon Group. Despite the fact that the spouses received bail, Mr. Dhoot, the chairman, was taken into custody for pressuring them. According to the Money Laundering Act of 2002, they were all accountable.

We may also conclude that corporate entities exploited the separate legal entity as a shield to protect themselves from legal dynamics because all three of the aforementioned cases showed a great deal of similarity and featured information that demonstrated money laundering. In some instances, we argue that the veil was lifted successfully, but in others, we saw that the offenders were able to get away by taking advantage of the gaps.

RECOMMENDATIONS

There are various obstacles courts must overcome in order to look behind the corporate veil and uncover the truth. In order to ascertain whether the case falls under the exception of the principle and money laundering crime, the judiciary therefore employs the four-factor method. It also outlines the circumstances in which this kind of corporate fraud should raise a red signal.

- The first is the use of dishonest tactics to avoid responsibility; the second is unfair and immoral; the third is a wrongdoing; and the fourth is the involvement of components that are required to carry out money laundering activities. The four-factor method can be defined as the combination of these four components. Courts have the ability to highlight such circumstances and make the most of the exception by utilising these components.
- Businesses that can't establish their legal identity and operate under many affiliations ought to have their curtain lifted. A unique bar code that aids in identifying the legal entity should be used to facilitate the smooth start of financial transactions. There should be consistency in this code.
- The fact that there are insufficient methods for identifying a company's stakeholders, stockholders, and employees demonstrates how suspicious the organisation would be in the absence of such information. This raises red flags once more, and the curtain needs to come down.

- The lifting process should be started by the court if the firm disregards the guidelines set forth by the Companies Act of 2013. It must to adhere to legal formalities as well as corporate social responsibility.
- Corporate shields shouldn't be granted to undercapitalized businesses. Undercapitalization is the state in which a business cannot manage a firm because of a lack of capital. Fraud and mistakes are quite likely in these situations.

CONCLUSION

An economy is seriously threatened by money laundering. It upends the entire system and throws off the financial cycle. Many business tycoons have encouraged this practice, and since the 2000s, crime has increased dramatically. On January 17, 2003, "The Prevention of Money Laundering Act, 2002" was enacted by the legislature in response to this threat. The judiciary has made a significant contribution to the fight against these crimes in recent decades, and going forward, new tactics are anticipated to be developed to address the disputes. The aim to conduct deception and selfishness are identified in the paper as the initial causes.

Despite efforts to solve these problems, examples involving billions of dollars continue to surface, indicating the need for stricter legislation that is applied more effectively.

The purpose of the article was to demonstrate a significant connection between the corporate veil concept and the money laundering process. The study effectively demonstrates how criminals exploit the well-known corporate veil theory as a shield, and how crucial it is to breach the shield in order to stop crimes like money laundering.