

Corporate Personality



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ABSTRACT

A Company is a voluntary association of persons formed for some common purpose, with capital divisible into parts, known as shares, and with a limited liability. It is a creation of law and is known as an artificial person with a perpetual succession and a common seal. Law divides persons into two categories, viz (i) Natural person as human beings, and (ii) Artificial persons like companies which are created by a person of law. These people may also be human persons as a Man, Woman or child or legal persons. A legal person is any one, human or otherwise, who has rights and duties at law. All human persons fall into this category and a human person is a legal person all his life. It should however be noted that where as all human persons are legal persons, not all legal persons are human. The non-human legal persons are called companies or corporations which are created by process other than natural birth.

Introduction:

The term 'Corporation' (a word derived from the Latin 'Corpuse' which means "body") is also used for a company. A corporation is an association of individuals so constituted in law as to be invested with an independent collective personality. In the legal sense, the corporation is itself an entity or "person" with its own name, whose rights and obligations are distinct from those of its constituting members, and it is endowed with a perpetual succession and a common seal where by to identify in acts. In general way incorporation a company becomes a body corporate or corporation with a perpetual succession and a common seal.

Incorporation offers certain advantages to the business community which other types of business organization generally, do not enjoy. The doctrine of separate legal entity may be referred as "the veil of incorporation. The effect of this doctrine is that there is fictional veil between the company and its members; that is, the company has a corporate personality which is distinct from its members. A corporation sole is a corporation constituted in a single person. He, in right of some officer or function, has a corporate statute. For example of corporation sole are to be found in perpetual offices such as the President, Governors, Crown, Minister etc. A Corporation aggregate consists of a group of persons contempora-

neously associated so that they form a single person, e.g., limited Company, a Municipality, or a Municipal Corporation.

The object of this research paper is to analyze the concept of corporate personality with the help of statutory provisions and case law relating to corporate body, is the creation of law. Under section 34(2) of the companies Act, 1956 provides that from the date of incorporation, the subscribers to the memorandum and other members shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of on incorporated company and having perpetual succession and a common seal. In other words, means that an incorporated company exists as a complete being by virtue of its legal personality and is often described as an artificial person in contract with a human being who is a natural person.

The company as a legal entity is separate and distinct from its promoters, share holders, director's officers or employees and as such it is capable of enjoying rights and being subject to duties which are not the same as those enjoyed or borne by its members. The property of the company belongs to it and not sued in its own name; it may enter into contracts with third parties independently and even the members themselves can enter into contract with the company. Partner observed regarding the advantages of an incorpo-

rated company as follows: "The benefits following from incorporation can hardly be exaggerated it is because of incorporation that the owner of the business ceases to trade in his own person. The company carries on the business; the liabilities are the company's liability for anything the company does, although, as principal shareholder, he is able to take full advantages of profit which the company makes¹.

The Importance of the separate entity of the company was very well brought out in the case of Saloman Vs Saloman & Company LTD². In this case one saloman was a boot and shoe manufacturer having sound business with surplus of assets over liabilities. He incorporated a company named Saloman & Company LTD. for carrying on his business. The seven shareholders who were subscribers to the memorandum of this company were Saloman, his wife, and daughter and four sons. Saloman's wife and his five children held one share each in the company and all the remaining shares were held by the Saloman himself, the business was transferred to the company for 40,000, by way of payment Saloman took 20,000 shares of 1 each and debentures worth \$ 10,000. These debentures created a charge on the assets of the company. The company went into liquidation³ within a year and its assets amounting to \$ 6,000 were insufficient to pay the debentures in full, and the ordinary creditors received nothing. The liquidator sought to have the debentures cancelled on the ground that the company was only an agent of Saloman.

The unsecured Creditors, on their part, contended that though incorporated under the Act, the Saloman & Company, LTD had no independent existence and it was impact only Saloman who was the sole person behind it, he was the managing director, the other directors being his sons, were under his control. Thus in effect the company was a one-Man's show and therefore their existence was contrary to the spirit and meaning of the company Law. The House of Lords, however ruled that Saloman & Company LTD., was a real company complying with all the legal requirement of incorporation as such, was a legal entity having its independent existence, separate from its members. Their hardship of the house of lords inter alia observed " when the memoran-

dum is duly signed and registered, through there by only seven share taken, the subscribers are a body corporate capable forthwith of existing all the functions of an incorporated company . It is difficult to understand how a body corporate thus created by statute can lose it's individually by issuing the bulk of its capital to one person. The company is at law a different person altogether from the subscribers of the memorandum, and though it may be that after incorporation the business is precisely the same as before, the same persons are managers and the same hands receive the profits, the company is not in law their agent or trustee. The statute exacts nothing as to the extent or degree of interest which may be held by each of the seven or as to the proportion of interest, or influence possessed by one majority of the shareholders over other⁴. The principle of separate corporate personality has many important consequences⁵ for instant with reference to the example of Ram & Co. LTD. given above.

- a) Ram has to insurable interest in the property of Ram & Co. Ltd.⁶
- b) When the Ram dies, the company continues in existence. His shares and not the assets of the business, vest in his personal representative.
- c) The nationality of the company does not depend on the nationality of Ram.

Referring to one-man company like that Saloman & Company Ltd. Honorable Justice Kania (as he was then) of the Bombay High Court observed. "Under the law, an incorporated company is a distinct entity, and although all the shares may be practically controlled by one person, in law a company is a distinct entity and it is not the directors belonged to the same family or whether it is, as compendiously described a one man company.

It must however be pointed out that the principal of distinct and independent existence of company consequent to its incorporation has been recognized Salomon case. Thus in Re Kondoli Tea co. Ltd.⁷ the High Court of Calcutta observed that the company was altogether a separable person, different from its shareholders and therefore the transfer was as much a conveyance, a transfer of the property as if the share holders had been totally different persons. In this case the members transferred a tea Estate to a company and claimed

exemption from valorem duty on the ground that they themselves being the share holders in the company, it was in fact a transfer to themselves in another name. The Court however, rejected their contention and ruled that in the eyes of law the company was distinct independent person, separate from its shareholders.

The question of Company's independent existence, separate from its shareholder irrespective of the motives, intentions etc... Schemes or conduct of individual shareholders come from decision once again in *Dhulia Amler Motor Transport Ltd. v/s Raychand Rupsi Dharamsi*⁸. The fact of the case were that a partnership firm was carrying on the business of playing buses while the partnership was still a running concern, same of the partners formed a private limited company. The partners who formed the company sold the buses which were owned by them to the company which were hitherto being used by the firm. The remaining partners who did not join the company and were in minority, send the company claiming their share in the profit on the ground that in reality the company was not different from the firm as the business carried on by it was the same as that on the partnership.

Rejecting the contention of the petitioner's Bombay High Court ruled that they had no right to sue for share profits from the company's business because the company was at altogether a third persons and its entity was different from those of its shareholders. The court further observed that the motive of the partners for forming company and becoming its shareholders was of no consequence in the instant case. The issue whether a person in total control of a limited company by reason of his shareholding and directorship is capable of stealing the property of the company and

whether two men in total control of a limited liability company; by reason of their shareholding and directorship, while acting in concert are capable of jointly stealing the property of the company, came before the English court of appeals criminal division in the form of Attorney General reference⁹. The court held that a company is a legal entity separate from its shareholders. Therefore it cannot be said. That shareholders and directors are the sale owners of all company's property.

The Supreme in *singer India Ltd. v/s Chander Mohan Chadha* has observed that "The Corporate veil was lifted under Section 34 in order to ascertain whether corporate personality was being blatantly used as a cloak for fraud or improper conduct. The court further clarified that it was not open to a company to ask for unveiling its own cloak for fraud or improper conduct. Subletting or parting with possession by American company regarding amalgamated with Indian Company¹⁰.

The supreme court in *m/s Electronics Corporation of India Ltd. v/s secretary Revenue Department; Government of Andhra Pradesh*¹¹ Inter-alia observed that a clear distinction must be drawn between a company and its shareholders may be only one i.e. the central of State government. In the eyes of the Law, a copy registered under companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

A company being a body corporate can sue and be sued in its own name this is so, because it has a Legal personality of its own. The company; as a legal entity is separate and distinct from its promoters shareholders, directors, officers or employees and such as such it is capable of enjoying rights and the same as those enjoyed or borne by its members.

REFERENCE

- 1) Palmer's Company Law, (4th Ed.) P. No. 13
- 2) (1897) Ac.22
- 3) (The loss of business was due to general trade depression hence saloman was not to be blamed for the liquidation of the company)
- 4) (Per Macnaughten. LT. for criticism of this decision see Kiralty some unforeseen consequences of private incorporation)
- 5) (1949) 6 Co.R 231)
- 6) Praga Tools corporation v/s manual, AIR 1969 SC 1306
- 7) (1886 Lr. 13 cal 43).
- 8) (AIR 1952 Bomby 337)
- 9) 1984 All ER 216
- 10) AIR 2004 SC 4368
- 11) AIR 1999 SC 173