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Introduction

The Limited Liability Company is indeed the most exceptional inventions made by the mankind. However, the very unfortunate thing is that these companies are frequently used in bad faith, particularly, as an approach to defraud creditors. At this point, a question is emerged whether it is compulsory to always strongly pursue the limited liability doctrine, or at times such a doctrine can be neglected placing the obligation to the creditors on the company's participants or other liableindividuals. It is quite clear that these anticipations are at times verypossible and can be recognised in the frameworks of piercing the veil of incorporation principle. Simultaneously, it is necessary for these situations to be adequately restrictive, so that the very concept of limited liability cannot be discredited. In this essay, a legal perspective will be used to discuss whether the balance between shareholders' limited liability and veil lifting is fair. The lifting corporate veil concept will be discussed by reviewing real-world examples, while demonstrating the imperativeness of its importance.

Lifting the Corporate Veil and Shareholders' Limited Liability

Salomon v A. Salomon & Co Ltd of 1897 was a classic case, in which the issue of corporate veil liftinghas been discussed in the high courtfor the very first time in the history. The case scenario is that Salomon transferred his shoe manufacturing business, initially operated as a sole proprietorship, to Salomon Ltd., and incorporated with himself and his family (wife and children) as shareholders. So, most of the shareholders owned the company's (shoe factory) 20001 shares[1]. Regardless of the ground reality that the company's control was totally in the hands of majority shareholders, which experienced bankruptcy, the House of Lordsas a court categorically refused liquidator, who liquidates properties or preserves them for the beneficial interest of affected parties, to entrust the shareholder liable for the company's financial obligation, the debts[2]. In this case, the court stated by taking a formalistic stancethat every single legal necessityrelated to the foundation of a limited liability corporation had been fulfilled, and

[1]Wallace, Cynthia Day, ed. The multinational enterprise and legal control: host state sovereignty in an era of economic globalization. Martinus Nijhoff Publishers, 2002.
[2]Wallace, Cynthia Day, ed. The multinational enterprise and legal control: host state sovereignty in an era of economic globalization. Martinus Nijhoff Publishers, 2002.

the court had no discretionary rights to impose any more requirements on them[3]. Nevertheless, jurisprudence as a legal philosophy was emerged due to the development of corporate forms in global business world to the fact that in some of the law cases the courts realised the need to move back from the doctrine of the limited liability of shareholders (participants) of the company and the overall management, along with the parent companies' liability for their subsidiaries' actions.

The significance of the corporate veil lifting concept is in allocating responsibility of aself-governing legal body to third parties. In reality, there are three situations in which this term is used[4]:

1. When the court, while dealing with the liability matter of the legal entity,leaves the founders' (participants) limited liability principle and puts the responsibility on them;
2. When the separation of legal entities associated with a holding or a group of legal entities is neglected by the court, and then the court inflicts liability of an independent legal entity on separate legal entities including the holding or group by using the "single economic unit" principle;
3. When the liability is imposed on the bodies of the legal entity by the court.

Nevertheless, these cases have some very complex nature of issue which is to ascertain the criteria through which the organisation will be the matter of veil lifting. Generally, lifting the corporate veil is appropriateand in this regard at least three circumstances have been found by the courtin the civil proceedings scenario[5].

The first situation is that if the lawbreakeruses the corporate veil to hide one's misconduct and benefits from it. The second one is that if an act is committed by an offender for or in the interests of the company, which (with the mandatory existence of guiltiness) establishes a lawlessact or crime resulting in one's punishment; the corporate veil in this specific situation is not even elevated but rather torn off in a casually inconsiderate manner. The last is that if the commercial structures or transaction are "device", "cloak" or "sham", that is, an effort to mask

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[3]Tweedale, Geoffrey, and Laurie Flynn. "Piercing the corporate veil: cape industries and multinational corporate liability for a toxic hazard, 1950–2004." Enterprise & Society 8, no. 2 (2007): 268-296.
[4]Millon, David. "Piercing the Corporate Veil, Financial Responsibility, and the Limits of Limited Liability." Washington & Lee Public Law Research Paper 03-13 (2003).
[5]Strasser, K.A., 2004. Piercing the veil in corporate groups. Conn. L. Rev., 37, p.637.

the transaction's or structure's actual nature to deceive third parties and even the courts. So, it can be said that the approach of lifting corporate veil in civil law cases is based on the "ownership and control' and "bad faith" criteria subject to obligatory proof.[6]

The first element is denoted by the term "dominance" and the idea is that the controlling person has the ability to fully define actions of the controlled entity. To establish the fact of control, a number of factors can be used that considered together may indicate the presence of total control feature (situation where the company is the alter ego or instrumentality of its owner), as researched by Franklin[7] and Nyombi[8]:

- Insufficient independence, i.e. providing a minimum ownership capital insufficient for conducting activities;
- Milking the company – use of company's funds for personal needs of the owner (direct payment of personal telephone calls, personal vehicles, personal purchases, expenses of relatives, etc. from the corporate accounts);
- Misrepresentation – distortion of facts regarding business activities, information about location, company's assets, managerial staff, providing false addresses, nominees as the administrative body of the company;
- Commingling and holding out – the use of joint accounts, facilities, transport and other property;
- Non-compliance with corporate procedures/formalities: the absence or irregular conduct of meetings of participants, absence or merely a nominal presence of directors and other employees, inobservance of recordkeeping requirements, lack of bank account or conducting corporate transactions from the owner's account, conducting business for the company and not for the owner, no or irregular report documentation and submission to the public and other authorities;
- Non-payment of dividends, non-distribution of profits;
- Using the company to pay the debts of other companies or those of the owner.

[6]Strasser, K.A., 2004. Piercing the veil in corporate groups. Conn. L. Rev., 37, p.637.
[7]Oh, Peter B. "Veil-Piercing." Tex. L. Rev. 89 (2010): 81.
[8]Nyombi, Chrispas. "Lifting the veil of incorporation under common law and statute." International Journal of Law and Management 56, no. 1 (2014): 66-81.

In 1939, Smith, Stone & Knight Ltd v Birmingham Corporation was the case when the main criteria for a company's recognition as the shareholder's agent were developed. In this case, the company wanted to forcibly acquire the land that was the property of SSK's subsidiary Birmingham Waste Co Ltd, and parties involved were in conflict over the direct compensation to Smith, Stone & Knight Ltd[9]. This case included the following[10]:

- The company's profitability is taken as the shareholder's profit;
- The shareholder employs the people who involved in activities on the company's behalf;
- The shareholder is the company's brain;
- The shareholder has eternal control over business of the company.

Here, the case of DHN Food Distributors v Tower Hamlets London Borough Council of 1976 is very important to be considered, although it was unusual in terms of that the company's very controlling entity called for lifting the corporate veil[11]. So, the place of the subsidiary controlled was wanted to take by its parent company. The scenario of this case is that a land in London officially owned by the company associated with DHN-holding group owning a grocery store was answerable to the mandatory take-over for public use. The buy-out plot was the warehouse place of DHN store, and by the contract with the associate DHN enjoyed the land's perpetual leasing right. Its withdrawal resulted in the termination of DHN business, and it could sue for loses, whether financial or non-financial if the land was owned by it. After that, a legal action was taken by DHNfor lifting the corporate veil, and it suggests that it entirelygoverned its subsidiary. The arguments made by plaintiff were agreed by the Court, which led to lift of the corporate veil, letting DHN get compensation for the land's withdrawal rather than the subsidiary.[12]

In all cases of principal-agent relationship constituted between the company and its shareholder, independence was actually lost by the company, through which the courts neglected the

[9]Dignam, Alan, and Andrew Hicks. Hicks & Goo's cases and materials on company law. Oxford University Press, USA, 2011.
[10]Dignam, Alan, and Andrew Hicks. Hicks & Goo's cases and materials on company law. Oxford University Press, USA, 2011.
[11]Dignam, Alan, and Andrew Hicks. Hicks & Goo's cases and materials on company law. Oxford University Press, USA, 2011.
[12]Dignam, Alan, and Andrew Hicks. Hicks & Goo's cases and materials on company law. Oxford University Press, USA, 2011.

Solomonprinciple. Simultaneously, lifting the corporate veil is not sufficient if the ownership and control criteria are its bases. Further, the court has no right to lift the veil only because, in its view, it conforms to the justice interests, but lifting corporate veil is necessary if the case also includes impropriety, misuseor exploitation of rights, deception or wrongdoing[13]. Moreover, the essence of this criterion is that the controlled entity is used by the controlling person to the detriment of a third party and at the same time as the tool to escape from responsibility of the controlling person itself[14]. In this situation, the case goes about using the company's corporate structure as a veil to disguise the ground realities.

In case of the presence of dominant control and impropriety associated with the utilisation of corporate structure so that liability could be avoided, corporate veil should be lifted so as toavoid fraudulent activities at the corporate level. This approach is necessary to avoid also the executing contractual or other legal responsibilities. Simultaneously, shareholders may be accepted as personally liable if their illegal purposes or deliberate concealment of the true state of affairs is proved.

Conclusion

As far as the current law is concerned, a legal entity is totally separatefrom its founders and functions independently, with the capacity to own assets, to become involved in commitments, and sue and be sued. An immanent feature of the legal entity's independent nature is its founders' limited liability: they are free from any liability for the responsibilities and requirements of the legal entity, that is, they are behind its veil. Development and impediment of civil turnover resulted in the need to set the exceptions list to this doctrine, especially to counter the misuse of this right. The doctrine of "Veil Lifting" is integrated now in the UK corporate law as well as in other countries and its key objective is to facilitate withthorough and proper exercise of civil rights and civic obligations.

In fact, piercing the corporate veil is the best tool to balance the company shareholders' interests and needs, along with the creditors' interests, and is lawful to exposethose who are the ultimate

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[13]Millon, David. "Piercing the Corporate Veil, Financial Responsibility, and the Limits of Limited Liability." Washington & Lee Public Law Research Paper 03-13 (2003).

[14]Callison, J. William. "Rationalizing Limited Liability and Veil Piercing." The Business Lawyer 58, no. 3 (2003): 1063-1072.

beneficiary and meet the creditors' rights, if the entity is formed only for the use of participants' limited liability in terms of debts, which is particularly evident in activities of "one person" companies. In our opinion, despite the existing differences in interpretation, the institution should be used not to destruct the limited liability, but to prevent the unlimited one. In particular, it makes sense to consider the corporate veil lifting principle in the overall scenario of the fight against misuse of relations at the corporate level, along with a kind of addition to the norms of the written law, stipulating that under certain circumstances company participants can be deprived of their privilege of limited liability.

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