

COMPARATIVE ANALYSIS OF 'REVERSE PIERCING OF CORPORATE VEIL' WITH THE TRADITIONAL VEIL LIFTING CONCEPT

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1. INTRODUCTION

Conventional legal theory states that a stockholder's exercise of corporate power does not expose them to responsibility beyond the firm's assets.¹ This concept of corporation limited responsibility is "deeply imbued" in American legal and economic institutions.² It is essential to consider the advantages of judicially recognising a corporation as a separate legal entity, such as how it can encourage shareholder investment by lowering investor risk exposure.³ There are limitations to limited liability, though. Courts will use the "equally fundamental principle" of piercing the corporate veil when a corporation is used as a liability shield or for an illegal business goal.⁴

One must "pierce the corporate veil" in order to hold a shareholder responsible for the corporation's activities.⁵ Although exact definitions differ by state, courts will dismiss the corporate entity (or pierce the corporate veil) when it is proven that a corporation is a "alter ego." A corporation is regarded as an alter ego when it is used as a "mere instrumentality for the conduct of [the shareholders'] affairs without regard to separate and independent corporate existence."⁶ The "primary objective" of traditional veil piercing is achieving equity. (sometimes referred to as "traditional piercing").⁷ Less frequently done is the reverse piercing of the corporate veil. Where the corporate veil is available, both firm insiders and external third parties have the option to reverse pierce it.

2. TRADITIONAL PIERCING OF CORPORATE VEIL

A business is regarded as an artificial person, separate from its members, and as such, it has all legal rights and obligations and is liable for them. As a result, the business does not function as either an agent or a trustee for its members, and as a result, they are not held accountable for one another's actions in any way other than as provided for by the laws governing corporations. As a result, after its formation, the corporation is not accountable for the

deeds or failure to act of its stockholders or members, and vice versa. The "corporate veil" is the legal term for the barrier or shield that stands between a company and its shareholders or members. The corporate veil is occasionally breached when the owners use the company to hide their immoral intentions and actions⁹. It is frequently simpler to commit fraud or other illegal activities when there is a wall of separation between the organisation and the shareholders. Some people think of

the business as their alter ego. According to the Alter-Ego theory, if there is a hidden profit involved when someone directs the mind of a firm and makes commands, that person will be held accountable. A company may likewise be named as an accused person.¹⁰ Because the firm is an artificial person, it cannot be compared to any other autonomous natural person. It is helpless and numb without its parts.

The Court is required to discover the parties' intentions with regard to such enactments. Legislative legislation or judicial interpretations are used to make this categorisation. There are no rules or regulations that must be followed when this curtain is torn; rather, it relies on the circumstances of each unique situation.¹² The doctrine of piercing the corporate veil or lifting the corporate veil is applied by Indian courts based on two theories:

1.1. THE THEORY OF THE ALTER EGO:

It claims that illegal behaviour is taking place when the distinction between a corporation and its owners is muddled and the company essentially acts as the owners' alter ego.

Because there is no longer a separate legal existence for the company and there is a shared interest between the owner and the company, separating the corporation from its owners discloses the owner's illegal activity.¹³

1.2. THE INSTRUMENTALITY THEORY:

According to this theory, a corporation becomes essentially an instrument of its owners or directors, who have complete control over it and use it for their own gain, when they employ the corporate personality for their own benefit rather than the firm's.¹⁴

The Hon'ble Supreme Court acknowledged the doctrine of corporate veil piercing in *Life Insurance Corporation of India v. Escorts Ltd.*¹⁵ and stated the following: "The

veil of a corporate entity can be pierced when a legislation expressly permits it, when improper conduct or fraud is sought to be avoided, when a tax statute is tried to be circumvented, or when related entities are intimately associated and, in reality, part of one concern." Because this would inevitably depend on the law, its aim, the alleged activity, the impact on potentially impacted parties, the public interest component, etc., it is neither essential nor desired to specify the types of situations in which breaching the veil is permitted.

The 2013 Companies Act also includes a few provisions that permit the piercing of the corporate veil. According to Section 339¹⁶, anyone who runs a business with the intent to defraud creditors or for any other dishonest motive may be prosecuted for fraud by the National Company Law Tribunal.

According to Section 216¹⁷, the Central Government may appoint inspectors to look into and report on the company's operations in order to ascertain who the real owners are:

"Who are financially interested in the success or failure of the company; or Who control or materially influence the policy of the company; or

Who have beneficial interest in the company."

The Serious Fraud Investigation Office may be appointed by the Central Government to conduct an investigation into the company's operations under Section 212.¹⁸ The Central Government may appoint inspectors to look into the company's affairs in accordance with Sections 210¹⁹ and 212.²⁰

1.3. GROUNDS FOR PIERCING THE CORPORATE VEIL

The lifting of the corporate veil theory has

specific requirements that Indian courts have established, but these requirements are not legally required, and the doctrine's applicability will depend on the facts of the particular case.²¹

- PREVENTING TAX EVASION: The corporate status of a firm is commonly used to get out of paying taxes and other expenses that the business would otherwise have to pay in accordance with the law. In such cases, Indian courts frequently tore through the corporate veil of the corporation to ascertain whether the business was making use of its separate legal existence to evade paying taxes and other obligations.²²

In *Commissioner of Income Tax v. Sri Meenakshi Mills Ltd., Madurai*²³ According to a decision by the Supreme Court, courts may lift the corporate veil and disregard an entity's corporate nature if it is being exploited to cheat taxes.

The Supreme Court noted in *Vodafone International Holdings BV v. Union of India*²⁴ that if the Income Tax office could demonstrate that the alleged transaction constituted a scheme to evade taxes, it might be able to lift the corporate veil. It was determined that the Income Tax department had the right to look behind the company's corporate façade in order to ascertain if it was a resident of Mauritius and whether it was submitting income taxes there.

- ASSOCIATED COMPANIES INEXTRICABLY CONNECTED SO AS TO FORM ONE ENTITY IN REALITY:

A corporation may occasionally own a controlling interest in another business, and the two may even be integrated to the point where they operate as a single entity. The courts can apply the lifting of the corporate veil theory in these cases to determine the true nature of the entities

and determine if such a structure is being used as a front for improper purposes.²⁵ In *State of UP v. Renusagar Power Co.*, Renusagar²⁶ was providing energy to Hindalco, which owned 100% shares of Renusagar. The Supreme Court determined that Hindalco and Renusagar should be recognized as a single entity by using the lifting of the corporate veil concept.

- TO IDENTIFY TRUE NATURE OF THE TRANSACTION:

Corporate personas can be used as a front for unethical commercial activities carried out in the name of a firm. The piercing of the corporate veil idea is a tool that courts can use to uncover the real nature of the transactions at issue and hold those parties accountable. The Supreme Court used the lifting of the corporate veil concept to determine the true nature of the transaction and the actual participants to the sale.²⁷

The Supreme Court, in the case of *Subhra Mukherjee v. Bharat Coking Coal Ltd*²⁸, determined that as the company's directors had forced their wives to buy the company's assets, the transaction was fraudulent. In *Vodafone International Holdings BV v. Union of India*²⁹, the Supreme Court further noted that the corporate veil can be lifted when a business engages in an indirect transfer while abusing its legal structure "without reasonable business purpose" and when "the transaction is used primarily as a colorable device for the distribution of earnings, profits, and gains" in order to circumvent tax obligations.

- PUBLIC INTEREST:

Another argument for applying the corporate veil theory is the public interest claim. Using the company's corporate character as a tool, this can be done to give effect to a law that was meant to be disregarded.

In *Rajasthan State and Ors v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and Ors*³⁰ the Supreme Court cited the public interest justification for lifting the corporate veil and noted that the corporate veil can be breached if the public interest justifies it. It noted that : “By splitting the transaction into two, the corporate structure in this instance was used to conceal the actual transaction of giving a mining lease to a third party for cash without first obtaining the required statutory consent.” the conversion of a partnership into a corporation in the first instance, and the selling of the entire ownership to a different corporation in the second. The actual transaction is the illegal sale of a mining lease.

- FRAUD:

The most popular defence for the piercing of corporate veil theory is fraud. When persons in charge of the corporation conduct frauds while hiding their acts behind the corporate identity of the organization, the corporate veil may be lifted by the courts in order to hold them personally responsible.³¹

In *Delhi Development Authority v. Skipper Construction Company (P) Ltd. and Ors.*³², “the accused had established a number of businesses and was utilizing their corporate personas as fronts for fraud against the public.” Using the lifting of the corporate veil principle, the Honourable Supreme Court found that the accused was directly in charge of just one single company, which made him immediately liable for fraud.

The Delhi High Court used the lifting of the corporate veil doctrine in *OIS Advanced Technology Pvt. Ltd. v. State of NCT of Delhi*³³ to hold those with actual control over the corporation liable. The Court ruled that the accused were utilizing the corporate identity of the company as a

tool to protect themselves from liability while engaging in questionable transactions, disregarding the distinct legal existence of the shell corporation.

- VIOLATION OF HUMAN RIGHTS AND RIGHTS OF EMPLOYEES BY GOVERNMENT COMPANYY

In the case of *Kapila Hingorani v. State of Bihar*³⁴, a government-owned corporation was behaving in a way that was detrimental to the interests of the company's employees. According to the Supreme Court, “when a corporate organization acts unjustly or against the interests of the general public, the corporate veil might be lifted. A court's piercing of the veil revealed that the Government of Bihar was the only shareholder of the corporation and that it had extensive and pervasive control over its operations.” The court additionally found that the State has a constitutional duty to safeguard the lives and liberties of all of the firm's employees when it exerts such extensive and extensive control over a government company.

As a result, it was determined that the Government of Bihar was responsible for ensuring the safety of the company's employees' lives and liberties.

- CONTEMPT OF COURT

The Delhi High Court noted in *Jyoti Limited vs. Kanwaljit Kaur Bhasin and Ors*³⁵ that the accused wilfully disregarded the court's orders by inappropriately using the separate identity of a corporation as a cover. Using the lifting of the corporate veil theory, the court immediately fined the accused for contempt of court.

3. EMERGENCE OF THE DOCTRINE OF 'REVERSE' PIERCING

The Supreme Court's ruling in the *W. G. Platts*³⁶ case in 1956 marked the complete establishment and adoption of the doctrine in the US. The plaintiff in this case sought to hold her husband's business

accountable for paying her share of the assets listed in the divorce decree. There was a property (marital) issue in the case. The Court authorised "reverse" piercing to carry out the decree because it found that the corporation was the husband's "alter ego," or secondary or other personality. Two years later, a district court in Colorado reinforced this approach by adopting an all-inclusive definition in *Shamrock Oil & Gas v. Ethridge*.³⁷

According to district judge Arra J, "the real and obvious truth should never be allowed to be barred out and perverted by the [mere] abstraction of the corporate entity." This had a long-lasting effect on the doctrine in US law. Following that, 'reverse' piercing began to be used frequently as an explanation. It developed into a useful tool for the government, namely for tax collection. One of the leading cases in this direction is *G. M. Leasing Corporation v. US*.³⁸

When a shareholder's creditor attempts to make the corporation accountable for the debts of the shareholders, this is known as "reverse" piercing of the corporate veil. In contrast to this, in classic/traditional piercing, a creditor of the corporation seeks to hold the shareholder personally liable for the debts of the corporation. Reverse piercing is an equitable remedy for enforcing a civil judgement. In light of this, a creditor may bring a lawsuit against a corporation that bought the owner's personal assets in an effort to shield the owner from personal liability. The traditional corporate veil piercing is the opposite of reverse corporate veil piercing, to put it simply.³⁹

In contrast to piercing of the corporate veil, which holds an individual accountable for wrongs carried out in the name of the company, reverse piercing of the corporate veil imposes liability on the subsidiary or controlled company for the

actions of the parent company or the person controlling the company. The case *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.*⁴⁰ before the US Supreme Court is where the doctrine of reverse piercing of corporate veil first emerged. In this case, the defendant was sued by the plaintiff for nonpayment, and the plaintiff's claim was satisfied by attaching the assets of the defendant company's subsidiary.

3.1. TYPES OF REVERSE PIERCING

The corporate veil can be reversedly penetrated in two different ways: from the inside and from the outside. Simply said, outside reverse piercing happens when the corporate veil is raised in the interest of a third party or an outsider to the firm, whereas inside reverse piercing happens when the veil is lifted in the interest of a company insider.⁴¹

3.1.1. INSIDE REVERSE PIERCING

Inside reverse piercing occurs when those in charge of the business seek for the corporate veil to be raised in order to benefit from the business in ways they otherwise would not have been able to.⁴² For instance, the Delhi High Court's judgement in *Prem Lata Bhatia v. Union of India*⁴³ was based on inside reverse piercing even though the term "reverse piercing" wasn't mentioned in the judgment. The Delhi High Court determined that even after converting the sole proprietorship into a private company, the owner could not be evicted because actual possession of the property remained with the same person. This decision was based on the lifting of corporate veil idea.

3.1.2. OUTSIDE REVERSE PIERCING

By referring to the firm's assets, this doctrine is utilised to free the owner of the debts owed by the corporation. When a third party or an outsider to the business

asks for the attachment of the company's assets to pay the shareholder's obligations, the courts adopt this procedure.⁴⁴ For instance, the United States Supreme Court decided in *WG Platts v. Platts*⁴⁵ that the divorced wife could receive the company's assets in order to support her claims after concluding that it was the husband's alter ego.

3.2. EMERGENCE OF THE DOCTRINE OF REVERSE PIERCING IN INDIAN JURISPRUDENCE

3.2.1. JUDICIAL DEVELOPMENTS

As can be seen from their actions before to 2005, Indian courts have shown an unusual resistance to accepting this idea. In a significant number of cases that courts had to address at this time, businesses were alleged to have committed crimes that required criminal prosecution. It was decided that a fine would be the only penalty because a corporation could not get a mandatory prison sentence. The courts were still cautious to hold a company liable for the indebtedness or dishonest behaviour of the executives, though. For the sake of this hypothesis, the courts did, however, eventually recognise the idea of an alter-ego.⁴⁶

In *Iridium India Telecom Ltd v. Motorola Incorporation and Ors*⁴⁷, the court used the concept of alter ego and declared that "the criminal purpose of the corporation's alter ego may be imputed to the corporation as a whole." In addition, the Supreme Court ruled in the case of *Standard Chartered Bank v. Directorate of Enforcement*⁴⁸ that "a company can be prosecuted and fined for violations on behalf of its members, irrespective of the statutory punishment imposed under pertinent statutes." This position was further established in the case of *Aneeta Handa & Ors. v. God-father Travels*⁴⁹, which involved Section 141 of the

Negotiable Instruments Act of 1881, which implies that individuals' mens rea might be imputed to the firm to expose the corporate body to criminal accountability. This marked the introduction of the reverse piercing idea into Indian law. In the recent *Kingfisher Airlines*⁵⁰ issue, it was suggested that in order to enforce responsibility for paying loans to the Industrial Development Bank of India, all of the group companies should be brought together on one platform with Mallya serving as the unifying element. When property owned by Tej Properties Pvt. Ltd. was attached to pay off the debts of Mr. Tejwant Singh, the company's managing director, a similar argument was made in the *Skippers Builders*⁵¹ case.

Additionally, the Mumbai-based Debt Recovery Tribunal ordered Nirav Modi and his group of businesses to pay the debt in the PNB Scam Case based on the principles of this theory. The circumstances unequivocally show that the idea was applied in each of these cases, even if the court did not use the term "reverse piercing" expressly.⁵²

3.2.2. DOCTRINE OF PIERCING OF CORPORATE VEIL IN LIMITED LIABILITY PARTNERSHIPS (LLPs)

Section 3(1) of the Limited Liability Partnership Act, 2008 states that a limited liability partnership (LLP) is a body corporate and a distinct legal entity from its participants. LLPs are nevertheless subject to the concept of separate legal existence even though the notion of breaching the corporate veil has never been applied to them. The Limited Liability Partnership Act of 2008, on the other hand, holds the partners liable for any misconduct they may commit while operating on behalf of the LLP. These joint venture partners will be fully accountable

for the same. A dishonest employee, partner, or designated partner of the LLP will also be liable for compensating anyone who lost money due to their deeds.⁵³

“Section 30 of Limited Liability Partnership Act, 2008 provides for unlimited liability of the partners in cases of fraud. When an act is carried out by any of the partners of the LLP–

- I. So as to defraud creditors of the LLP
- II. Or for any fraudulent purpose⁵⁴

These joint venture partners will be fully accountable for the same. A dishonest employee, partner, or designated partner of

the LLP will also be liable for compensating anyone who lost money due to their deeds.

However, if the act was carried out without the LLP's knowledge or consent, the LLP will not be held responsible.⁵⁵

3.2.3. INCORPORATION OF THE DOCTRINE AND THE INDIAN INSOLVENCY REGIME

The Insolvency and Bankruptcy Code (hereafter "Code") does not expressly accept the reverse corporate veil principle, while it is not wholly excluded from its purview. In order to understand the ramifications of the corporate veil and its piercing under the Code, it is crucial to first describe them.⁵⁶ The Supreme Court acknowledged that Section 29-A imports the company law notion of corporate veil piercing in its historic decision in *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta*⁵⁷ because it makes it possible to determine who controls the firm (at the time of submitting the resolution plan). Additionally, it is believed that the corporate legal entity principle is applicable in situations involving group insolvency.

Group insolvency isn't specifically addressed in the Code, but Indian courts have recognised its application and have

previously abolished the separate legal entities of the group's participating enterprises. For instance, in the Videocon insolvency, the court invalidated the holding companies' independent legal structure to allow the merger of their assets with those of the parent company. So, under Indian insolvency law, corporate veil piercing has been a recognised practise. Due to the dearth of judicial precedents indicating the Indian courts' perspectives on the reverse corporate piercing of the veil, specific circumstances may allow a third party to attempt to resolve the issue utilising the protection of a special leave petition.

By pursuing businesses that the corporate debtor's management owns and controls, for instance, creditors may attempt to collect debts from the corporate debtor. Under present Indian insolvency law, creditors may file a lawsuit for payment against the corporate debtor or the individual who is the corporate debtor's personal guarantor. In reality, it was decided in *Lalit Kumar Jain v. Union of India & Ors.*⁵⁸ that even after the adjudication authority approves the settlement plan, the personal guarantor is still liable for the debt. The personal guarantors' authority over the business's assets makes it possible for them to be included in the resolution plan as well. In such a case, courts may apply the reverse piercing to determine that such assets are under the purview of the plan.

Due to the reverse piercing of the veil, which allows some assets to be hidden due to the legal entities' separation, courts and resolution professionals will be able to see more assets than only those of the corporate debtor. Contrarily, if the doctrine is followed, the assets held in the personal guarantor's name will be included in the settlement procedure. For instance, only the assets in which the

corporate debtor has ownership rights are covered under Section 18 of the Code.⁵⁹

3.3. ISSUES REGARDING THE APPLICABILITY OF REVERSE PIERCING OF CORPORATE VEIL

When using this theory in insolvency situations, a number of problems arise, such as the equitable division of assets or the priority of claims. The issue of whether creditors having reverse piercing claims should be treated equally with the highest-ranking creditors or should be given priority over all other rank holders as per Section 53. Both insiders and outsiders of the corporation may reverse pierce, allowing business owners to pierce the corporate veil at their discretion and rendering the Code vague and ineffective.

"Even where there is only one shareholder, this might give the shareholder's creditors an advantage over the business's creditors that they would not otherwise have, which can be problematic where the relevant organisation has multiple shareholders," it was noted. Furthermore, if the reverse piercing claims are successful, they will necessitate the participation of the adjudicating authority and the application of the judicial mind to ensure that the acceptance or rejection of the Committee of Creditors' (hereinafter "CoC") resolution plans is not just a mechanical process but rather a well-considered and logical decision. The commercial wisdom of the CoC, which serves as the last judge of resolution proposals, is thus limited by this provision. Further, the court observed that:

Corporate debtors are excluded from the application of this article since it only applies to "individuals," not "persons." The reverse piercing was therefore limited to particular insolvency situations alone.⁶⁰

It is asserted that the claimant must have exhausted all other reasonable possibilities, whether established by law or

more widely acknowledged, before resorting to the reverse piercing of the corporate veil. Case rulings like *William G. Schwab vs. Damenti's Inc. & Ors.*,⁶¹ where the Pennsylvania Bankruptcy Court had the ability to reverse pierce the corporate veil and hold another company controlled by the stockholders liable for the debts, provide support for this.

The court determined that there was insufficient evidence to establish that the shareholders and the corporations constituted a single entity, despite the fact that their identities may be utilised interchangeably in their actions. As a result, it was possible for companies to continue operating legally as well as for their stockholders.⁶² The court determined that the outside reverse piercing corporate veil doctrine was an anomaly that, if applied, would harm the corporation's innocent creditors who dealt with it as a separate legal entity in *Floyd v. Internal Revenue Service of the United States*.⁶³ In this case, the reverse piercing was turned down. This approach thereby violates the rights of the firm's creditors, who believe that their loans to the company are in some way or another secured by the assets of the company.

4. CONCLUSION

The "reverse" piercing theory has entered Indian law, despite the fact that it is still in its infancy. The issue that no corporate criminal culpability can be fixed on a corporation without a statute imposing the same bar persists today, nonetheless. Therefore, "reverse" piercing is frequently inappropriate. Indian courts acknowledge the alter-ego notion and corporate veil piercing as common law ideas. Be given the same treatment as reverse corporate veil piercing, a judicially acknowledged concept that only applies in extraordinary situations.

The court may only lift the veil after having exhausted all other avenues for resolving the

debt because there is a strong presumption against doing so under the law. Even while judicial recognition of reverse corporate piercing of the veil is required, it shouldn't be assumed too readily in view of the issues brought above.

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