LIFTING THE CORPORATE VEIL

IN COMPANY law, the doctrine of lifting the corporate veil has been well known for some time. Generally speaking, the doctrine is made use of, so as to avoid the perpetration of fraud, evasion of tax or eliminate the possibility of subtle means being adopted for circumventing one particular statute. The doctrine has been applied in a number of cases in India, many of which were surveyed in *L.I.C.* v. *Escorts Ltd.*,[1] and in *State of U.P .* v. *Renusagar Power Co.* [2] At the same time, this doctrine cannot be allowed to be applied in an indiscriminate manner because, essentially and basically, a company is an independent legal entity, distinct from its shareholders. In fact, the court has to maintain a balance between the flexible doctrine of lifting the corporate veil and the fundamental principle that a corporation has a separate legal entity of its own. In *A.P. State Road Transport Corporation's* case,[3] the Supreme Court pointed out that the doctrine that a corporation has a separate legal entity is "so firmly rooted in our notions derived from common law that it is hardly necessary to deal with it elaborately". Before the Delhi High Court, in *New Horizons* v. *Union of India*,[4] the doctrine was sought to be put forth by a public limited company in support of its contention that the government had failed to award it the contract for printing *Yellow Pages Telephone Directory*, even though its offer of royalty was higher than that of the concern whose tender had been accepted. The petitioner's offer had been rejected on the ground that it did not have experience of printing *Yellow Pages*. The petitioner's counter contention on this point was, that, (*i*) one of its shareholders, a Singapore company, had such experience; (*ii*) the concerned authorities should have conducted an inquiry into the experience of its shareholders; and (*iii*) in the public interest such experience should have been taken into account. This contention did not find favour with the Division Bench of the Delhi High Court (D.P. Wadhwa and Vijendra Jain, JJ.). It may be mentioned that the argument of the petitioner company was a novel one and did not fall within any of the recognised cases or categories in which the doctrine had been applied. Palmer[5] gives 11 instances of situations in which the doctrine has been applied in UK. But none of these situations seems to cover the one before the Delhi High Court. In fact, it will be too much to say that everything which is true in regard to shareholders will necessarily be true in regard to the company itself. If the argument of the company in the Delhi cases were to be carried to its logical conclusion, the result would be that shareholders would themselves become liable, though the contract had been

---

1. (1986)1 S.C.C. 264, para 90, 91.
2. A.I.R. 1988 S.C. 1737, para 52-63.
3. A.I.R. 1964 S.C. 1486.
4. (1994) Vol. 13, Issue No. 7, C.L.A. 429, 439-442.
5. *Company Law* (25th ed.).

entered into by the company. This would disturb the entire concept of a limited company and would, in reality, run counter to the doctrine of incorporation expressly laid down in section 34 of the Companies Act 1956. The Delhi High Court, with respect, acted rightly in quoting the following passage from Palmer:[6]

> In practice, the ability to choose between the application of the rule in *Salomon's* case and the jurisdiction to pierce the veil of corporateness gives the courts a considerable degree of discretion and enables them to do justice and to decide individual cases in accordance with equitable consideration. But it should be emphasised that the rule in *Solomon's* case is still the principle and the instance of piercing the veil are the exceptions, though their number is growing.

*P.M. Bakshi**

6. *Ibid.*

* Director, Indian Law Institute; Member, Law Commission of India, New Delhi.