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2025:DHC:5219

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:03.07.2025

\+ **C.R.P. 303/2024 & CM APPL. 61563/2024**

AJAY GUPTA AND ANR. .....Petitioners

versus

AMIT SALES CORPORATION PVT. LTD. AND ANR. .....Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Siddharth Handa and Mr. Manu Padalia, Advs.

For the Respondents : Mr. Amrendra Nath Shukla, Mr. Saurabh Malik and Mr. Suraj Sharma, Advs. for R-1.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed against the order dated 13.09.2024 (hereafter '**impugned order**') passed by the learned District Judge, Commercial Court, Saket Courts, Delhi in Execution (Comm) 548/2023 whereby the objection filed by the petitioners against the lifting of corporate veil *qua* the directors of Respondent No. 2 company/petitioners was dismissed.

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2. Briefly stated, a suit for recovery was filed by Respondent No. 1 against Respondent No. 2 company. Respondent No. 1 company dealt in the business of supply of steel pipes and tubes of various types and had been supplying goods/materials to Respondent No. 2 company for its various projects as per its demands since April, 2012 against purchase orders. It is the case of Respondent No. 1 that they had been maintaining a running account for the goods supplied and also for the payments received from the defendant-company. According to the said running account, a sum of ₹89,84,570/- remained outstanding.

3. Thereafter, Respondent No. 2 admitted to its liability and issued three cheques towards part payment of the outstanding amount. Out of the three cheques, one cheque for a sum of ₹50,00,000/- was presented for encashment, however, the same returned unpaid on 02.05.2013. Thereafter, another cheque dated 01.02.2014 was issued by Respondent No. 2 company towards part payment of ₹89,84,570/-. The said cheque too, upon presentation, returned unpaid *vide* return memo dated 26.04.2014 with remarks *"funds insufficient."* The said cheques were admittedly signed by Petitioner No. 1. A criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 was also filed by Respondent No. 1. A legal notice dated 09.05.2014 was also issued to Respondent No. 2 company to clear the outstanding amount of ₹89,84,570/-. However, despite service of notice, Respondent No. 2 failed to clear the outstanding dues. Consequently, a suit for recovery was filed before this Court. Since Respondent No. 2

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failed to enter appearance despite service, the suit was proceeded *ex-parte vide* order dated 04.09.2017.

4. By order dated 23.11.2017, this Court decreed the suit in favour of Respondent No. 1 company. It was noted that the act of Respondent No. 2 in issuing the cheque dated 01.02.2014 for a sum of ₹25,00,000/- in part payment of the outstanding amount and the same being dishonoured *vide* return memo dated 26.04.2014 with remarks "*funds insufficient*" were indicative of the *mala fide* intent of attempting to evade the payments due and payable to Respondent No.1. It was further noted that despite the issuance of legal notice dated 09.05.2014 to clear the outstanding dues, Respondent No. 2 company failed to either reply or clear the dues. Consequently, the suit was decreed for a sum of ₹1,11,04,928/- with *pendente lite* and future interest @8% per annum on the outstanding amount in favour of Respondent No. 1 company.

5. Subsequently, Respondent No.1 filed an execution petition being Execution (Comm.) 548/2023 thereby seeking execution of the decree against the petitioners. By the impugned order, the learned Executing Court noted that post the registration of FIR, the petitioners left India and were also declared proclaimed offenders. It was noted that the petitioners were directors at the time when the cheques were issued to Respondent No. 1 and also when the recovery suit was decreed in favour of Respondent No. 1. It was noted that Respondent No. 2 company was found to be indulging in defrauding the people,

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and that the petitioners were involved in issuance of cheques which got dishonoured in the present case. Consequently, it was noted that at the stage of execution proceedings, corporate veil could be lifted thereby making the petitioners liable.

6. The learned counsel for the petitioner submitted that the impugned order is liable to be set aside. He submitted that the suit was filed only against company and that the directors/petitioners were not a party to the suit. He submitted that no averment in the suit *qua* the directors were made in the suit for recovery. He submitted that the learned Executing Court failed to test the parameters of lifting of corporate veil. He submitted that in order to lift corporate veil against the directors, such directors ought to be found in engaging in fraudulent activities. He consequently submitted that the impugned order be set aside.

7. The learned counsel for Respondent No. 1 submitted that the petitioners were the only directors of Respondent No. 2 company. He submitted that multiple civil and criminal complaints have been filed against the petitioners. He submitted that Respondent No. 2 company issued some cheques to Respondent No. 1 company in the year 2014. He submitted that the said cheques were signed by Petitioner No. 1 on behalf of Respondent No. 2 company. He submitted that the said cheques were issued with *mala fide* intent and the same got dishonoured upon presentation. He submitted that thereafter the petitioners shifted to UAE after defrauding the public at large and a

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FIR No. 04/2017, PS: EOW, Delhi has been registered against the petitioners. He submitted that considering the *mala fide* intent of the petitioners in defrauding Respondent No. 1 company and the public at large, the corporate veil was rightly lifted *qua* the petitioners. He consequently submitted that the impugned order is well reasoned and warrants no interference by this Court.

Analysis

8. At the outset, it is relevant to note that the petitioner has challenged the impugned judgment before this Court under Section 115 of the Code of Civil Procedure, 1908. The scope of revision proceedings is limited to correction of errors of jurisdiction by subordinate Courts and cannot be misconstrued to be akin to an appeal.

9. The Hon'ble Apex Court, in the case of ***Keshardeo Chamria v. Radha Kissen Chamria* : (1952) 2 SCC 329**, had discussed a catena of judgments in relation to the scope under Section 115 of the CPC. The relevant portion of the aforesaid judgment is as under:

> "***21.*** *A large number of cases have been collected in the fourth edition of Chaitaley & Rao's Code of Civil Procedure (Vol. I), which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section. In* ***Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi [Mohunt Bhagwan Ramanuj Das v. Khetter Moni Dassi, (1896-97) 1 CWN 617 : 1896 SCC OnLine Cal 11]*** *, the High Court of Calcutta expressed the opinion that sub-clause (c) of Section 115 of the Civil Procedure Code, was intended to authorise*

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the High Courts to interfere and correct gross and palpable errors of subordinate courts, so as to prevent grave injustice in non-appealable cases. This decision was, however, dissented from by the same High Court in Enat Mondul v. Baloram Dey [Enat Mondul v. Baloram Dey, (1899) 3 CWN 581] , but was cited with approval by Lort-Williams, J. in Gulabchand Bangur v. Kabiruddin Ahmed [Gulabchand Bangur v. Kabiruddin Ahmed, ILR (1931) 58 Cal 111 : 1930 SCC OnLine Cal 52] ***. In these circumstances it is worthwhile recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts.***

22. *As long ago as 1894, in* ***Amir Hassan Khan v. Sheo Baksh Singh [Amir Hassan Khan v. Sheo Baksh Singh, (1883-84) 11 IA 237 : 1884 SCC OnLine PC 13]*** *, the Privy Council made the following observations on Section 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908 : (IA p. 239)*

> *"… The question then is, did the Judges of the lower courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it.* ***Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.****"*

23. *In 1917 again in* ***Balakrishna Udayar v. Vasudeva Aiyar [Balakrishna Udayar v. Vasudeva Aiyar, (1916-17) 44 IA 261 : 1917 SCC OnLine PC 32]*** *, the Board observed : (IA p. 267)*

> *"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."*

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24. *In 1949 in* ***N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board [N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, (1948-49) 76 IA 67 : 1949 SCC OnLine PC 8]*** *, the Privy Council again examined the scope of Section 115 and observed that they could see no justification for the view that* ***the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate courts could be measured****. It was said : (IA p. 73)*

> *"… Section 115 applies only to cases in which no appeal lies, and, where the legislature has provided no right of appeal, the manifest intention is that the order of the trial court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court on questions of fact or law."*

25. *Later in the same year in* ***Joy Chand Lal Babu v. Kamalaksha Chaudhury [Joy Chand Lal Babu v. Kamalaksha Chaudhury, (1948-49) 76 IA 131 : 1949 SCC OnLine PC 17]*** *, their Lordships had again adverted to this matter and reiterated what they had said in their earlier decision. They pointed out : (IA p. 142)*

> *"…There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their Lordships have been referred. Some of such*

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> *decisions prompt the observation that High Courts have not always appreciated that* ***although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under sub-section*** *(c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored."*
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> ***26.*** *Reference may also be made to the observations of Bose, J. in his order of reference in* ***Narayan Sonaji Sagne v. Sheshrao Vithoba [Narayan Sonaji Sagne v. Sheshrao Vithoba, AIR 1948 Nag 258 : 1947 SCC OnLine MP 21]*** *wherein it was said that the words "****illegally" and "material irregularity" do not cover either errors of fact or law****. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with."*
>
> (emphasis supplied)

10. In the case of ***Varadarajan v. Kanakavalli*** **: (2020) 11 SCC 598**, the Hon'ble Apex Court highlighted that merely because the High Court has a different view on the same facts, the same is not sufficient to interfere with the impugned order. The relevant portion is reproduced hereunder:

> *"****15…****The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity.* ***The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing***

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> ***court.*** *Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.*"
>
> (emphasis supplied)

11. The short question before this Court is whether the learned Executing Court rightly lifted the corporate veil *qua* the petitioners. The petitioners essentially contended that the learned Executing Court failed to test the parameters for lifting the corporate veil. It was contended that for the piercing of corporate veil, the directors ought to be found in engaging in fraudulent activities failing which the corporate veil cannot be lifted.

12. It is well settled that when a decree is passed against a company, it is the company alone that is liable to fulfil the terms of the decree and pay the decretal amount, if any. In such circumstances, the directors/the persons responsible for managing the affairs of the company, in their individual capacity, cannot *ipso facto* be made liable for the debts or liabilities of the company. However, the said principle is not absolute and is subject to certain reservations. For this reason, in cases where the corporate structure is misused to perpetrate fraud or to commit other illegal acts, the directors too can be made personally liable. Courts, in such scenarios, are empowered to pierce the corporate veil thereby disregarding the separate legal entity accorded to the company.

13. Before delving into an analysis of the facts of the present case, it is pertinent to note that the law in relation to lifting of corporate veil

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is well established. The doctrine of piercing of corporate veil finds its genesis in the landmark case of ***Salomon v. A. Salomon and Co. Ltd.*: (1987) AC 22** where it was observed as under:

> *"I am simply here dealing with the provisions of the statute, and it seems to me to be essential to the artificial creation that the law should recognise only that artificial existence-quite ·apart from the motives or conduct of individual corporators. In saying this, I do not at all mean to suggest that if it could be established that this provision of the statute to which I am adverting had not been complied with, you could not go behind the certificate of incorporation to shew that a fraud had been committed upon the officer entrusted with the duty of giving the certificate, and that by some proceeding in the nature of scire facias you could not prove the fact that the company had no real legal existence. But short of such proof it seems to me impossible to dispute that once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are."*

14. In the case of ***Balwant Rai Saluja vs Air India Ltd* : (2014) 9 SCC 407**, the Hon'ble Apex Court while delineating the circumstances that would justify the piercing of corporate veil observed as under:

> *"74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability.* ***The intent of piercing the veil must be such that***

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> ***would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."***
>
> (emphasis supplied)

15. Further, in the case of ***Arcelormittal India (P) Ltd. v. Satish Kumar Gupta* : (2019) 2 SCC 1**, the Hon'ble Apex Court observed as under:

> *"37. It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole."*

16. It is the case of the petitioners that the learned Executing Court failed to examine the parameters of piercing of corporate veil. It is contended that for the purpose of piercing of corporate veil, the directors ought to be found in engaging in fraudulent activities. This Court has examined the material on record and considered the rival submissions of both the parties.

17. It is pertinent to note that this Court, while passing a decree in favour of Respondent No. 1, had specifically noted that the act of Respondent No. 2 in issuing the cheque dated 01.02.2014 in part payment of the outstanding amount and the same being dishonoured were indicative of the *mala fide* intent of attempting to evade the payments due and payable to Respondent No.1. Admittedly, the said cheques were signed by Petitioner No. 1 on behalf of Respondent No.

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2. It is pertinent to note that the present petitioners were the only directors of Respondent No. 2 at all times which include the time of the issuance and dishonour of the cheques.

18. As rightly noted by the learned Executing Court, the petitioners thereafter shifted to UAE. It cannot be ignored that an *ex parte* decree was passed by this Court because no appearance was ever entered on behalf of Respondent No. 2. The propensity of the petitioners to first issue cheques on behalf of Respondent No. 2 that were bound to be dishonoured and to then evade the suit proceedings and leave India points towards a deliberate attempt on the part of the petitioners to evade legal obligations.

19. While it is not in doubt that a company has a separate legal entity, and that the corporate veil cannot be lifted in a routine manner, the same can be pierced if the corporate structure is misused to perpetrate fraud or shield the wrongdoers from the consequences of their actions. In terms of the dictum of the Hon'ble Apex Court in ***Balwant Rai Saluja vs Air India Ltd (supra),*** the intent of piercing the veil must be such so as to remedy a wrong done by the persons in control of the company. In that regard, the deceitful conduct of the petitioners in first issuing the cheques and then shifting to UAE and not joining the proceedings, makes it imperative to pierce the corporate veil.

20. It is also pertinent to note that the petitioners have filed the

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present petition through a power of attorney when they were not even in India. In the opinion of this Court, the judicial process ought not come to the rescue of individuals who attempt to evade the process of law.

21. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order.

22. The present petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

JULY 3, 2025