

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On: 21st July, 2017

Pronounced on: 14th September, 2017

+ W.P (C) No. 14502/2004

M/S. DUJODWALA RESINS & TERPENES Petitioner

Through: Mr.Ashok Mathur with
Ms.Nidhi Agarwal, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr.Abhay Singh & Ms. Chiral
Dugar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1. Unusually, the present writ petition lays a challenge, not to any award, as such, but to the attempt, of the Respondents 1 and 2, to enforce, against the petitioner, an award, dated 07th July, 1987, passed by the Labour Court in ID 20/1982 with which, according to the petitioner, it is in no way concerned.

2. *Vide* Certificate of Incorporation issued by the Registrar of Companies, Maharashtra (hereinafter referred to as “the ROC”), the petitioner-Company was incorporated, on 17th November 1976, as a private limited Company, under the name “M/s Dujodwala Resins & Terpenes Pvt. Ltd”. It became a deemed limited Company, viz. “M/s Dujodwala Resins & Terpenes Ltd”, on 16th February 1989, and an

amended Certificate of Incorporation was, accordingly, issued by the ROC, under which name and style it continues till date. The office of the petitioner was – and is – located at No. 1206, Vijaya Building, 12th Floor, 17, Barakhamba Road, New Delhi – 110 001, and its factory is situated at Industrial Complex, Bari Brahmana, Jammu.

3. It is the assertion of the petitioner that, out of the blue as it were, the petitioner received a notice, dated 27th February, 2003 from the Implementation Cell of the Labour Department, Government of National Capital Territory of Delhi (GNCTD), (impleaded as Respondent No.2 herein) alleging that the petitioner had defaulted in implementing the aforementioned award dated 07th July, 1987 passed by the Labour Court in ID 20 of 1982 (Management of M/s. Naval Store Corporation v. its workman Sh. Vishambar Dutt).

4. Before advancing further with the story, as recited by the petitioner before this Court, it would be necessary to briefly advert to the aforementioned Award, dated 07th July 1987, which constitutes, as it were, the proverbial apple in the petitioner's garden of Eden.

5. A perusal of the Award, dated 07th July 1987, (which constitutes Annexure P-1 to the writ petition) reveals that it was passed consequent on the reference, of “*an Industrial Dispute existing between the management of M/s Naval Store Corporation and its workman Shri Vishambar Dutt*”, to the Labour Court, by the Secretary (Labour), Delhi Administration, vide Notification No. F. 24

(1816)/81-Lrd dated 15th November 1981. The terms of reference read thus:

“Whether the termination of services of Shri Vishambar Dutt is illegal and/or unjustified, and if so, to what directions are necessary in this regard?”

6. Be it noted, here, that the parties, before the Labour Court, were “*The Management of M/s Naval Store Corporation*” and “*Its workman Shri Vishambar Dutt*”, and that, consequent to framing of issues, by the Labour Court, on 23rd May 1985, the management was proceeded *ex parte* on 19th December 1985 and, thereafter, an application, filed by the management, for setting aside the order proceeding, against it, *ex parte*, was also dismissed, by the Labour Court.

7. The Award, dated 07th July 1987, further notes that, in his *ex parte* evidence, as recorded by the Labour Court, Vishambar Dutt (who was arrayed, later, as Respondent No. 4) deposed that

- (i) he had been in the employment of the management since 12th March 1978, as Senior Store Keeper, on a monthly salary of Rs.310/-,
- (ii) he had, however, not been given any appointment letter by the management,
- (iii) the management, without any reason, did not pay him from December 1980 to February 1981,

- (iv) on 3rd March 1981, when he demanded his wages thus withheld by the management, his services were terminated, w.e.f. 5th March 1981,
- (v) his signatures were, for the said purpose, forcibly obtained on a “resignation letter”,
- (vi) he had not been served any notice or charge-sheet, and no enquiry was held against him, and
- (vii) he had been unemployed since the date of his termination.

8. No other evidence being forthcoming, the Labour Court, *vide* the Award dated 7th July 1987, held that Respondent No. 4 had been working with the management on a monthly salary of Rs 310/-, and had been terminated, on 5th March 1981, in breach of the law, and without paying him 1 month’s notice pay. Inasmuch as, prior to such termination, no notice had been issued to Respondent No. 4, the Labour Court found the termination of Respondent No. 4 to amount to illegal retrenchment, under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”). Consequently, Respondent No. 4 was directed to be reinstated with full back wages and continuity of service w.e.f. 5th March 1981.

9. Reverting back to the recital of facts, as adumbrated by the petitioner in the writ petition, it is averred that, on receipt of the notice, dated 27th February 2003, from Respondent No. 2, the petitioner responded *vide* reply dated 06th March, 2003, contending that it had never employed any workman named Vishambar Dutt and,

that, there could, therefore, be no question of enforcing the aforementioned award dated 07th July 1987 against it. The recital of events in the writ petition indicates that repeated similar notices were issued, to the petitioner, by Respondent No.2, on 02nd April, 2003 and 21st April, 2003, to which the petitioner responded, reiterating that it was neither aware of the aforementioned award dated 07th July, 1987 which was being sought to be enforced against it, nor had any employee by the name of Vishambar Dutt worked in its organization.

10. A third corporate player is introduced, on the scene, by “Writ of Demand”, dated 31st October 2003, which was issued, by the Tehsildar/Sub Divisional Magistrate to “M/s Dujodwala Industries, 12th Floor, Vijaya Building, 17, Barakhamba Road, New Delhi-1” (which, importantly, is the address of the petitioner), under Section 137 of the Delhi Land Reforms Act, 1954. The notice read (to the extent relevant) thus:

“Whereas arrears amounting to Rs 386679/- are due from you on account of Shri Bishamber Dutt you are required to pay the same by demand draft in favour of Bishamber Dutt in this office within 15 days from the date of service of this notice.”

Sub-sections (1) and (2) of Section 137 of the Delhi Land Reforms Act, 1954 may, pertinently, be reproduced as under:

“137. Writ of demand and citation to appear. –

(1) As soon as arrear of land revenue has become due a writ of demand may be issued by the Tahsildar on the defaulter calling upon him to

appear and deposit the arrear due on a date to be specified.

(2) In addition to or in lieu of a writ of demand the Tahsildar may issue a citation against the defaulter to appear and deposit the arrear due on a date to be specified.”

11. The petitioner responded, *vide* reply dated 16th July 2004, paras 2, 3, 5 and 6 whereof read thus:

“2. That our Company is a public ltd. Company having its branch office at Vijay Building 12th Floor Barakhamba Road, New Delhi – 110001 and has no concern whatsoever with the Company named M/s Naval Stores Corporation against whom the award is being passed in the year 1987.

3. That our Company has been totally independent and separate legal entity has no concern with the liabilities of M/s Naval Store Corporation.

5. That the workman Bishambar Dutt was never been employed by our Company and hence there arose no question of implicating us in this labour case.

6. That our Company being independent public ltd. Company having been incorporated in Companies Act, photocopy of the letter of incorporation is annexed herewith.

It is prayed that since our Company has nothing to do with the case regarding the workman Bishambar Dutt, so may be deleted from the labour proceedings continuing here.”

12. It is an undisputed position that none of the above communications, by the petitioner to Respondent No. 2, elicited any response.

13. It also appears that, in the interregnum, on 12th March, 2004, respondent No.4 filed an affidavit, to the effect that M/s. Dujodwala Industries Ltd. had changed its address and was operating from the petitioner's premises.

14. The writ petition asserts that, without considering any of the above responses of the petitioner, notice dated 23rd July, 2004, was issued, *to the petitioner*, by the Assistant Collector, Grade-I/SDM, New Delhi District, to the effect that Rs.3,86,679/- was recoverable from M/s Dujodwala Industries, and directing the petitioner, in that connection, to appear before him on 18th August, 2004. The said Notice, dated 23rd July 2004, merits reproduction *in extenso*, thus:

"Whereas a sum of Rs 386679/- is recoverable from M/s Dujodwala Industries, 12th Floor Vijaya Building, 17 Barakhamba Road New Delhi 110001 as arrear of land Revenue on account of Shri Bishambar Dutt Sharma.

M/s Dujodwala Resins & Terpenes Ltd, 12th Floor Vijaya Building, 17 Barakhamba Road, New Delhi is hereby directed to appear before the undersigned on 18.8.2004 at 11.30 A.M. without fail with all the documents otherwise it will be assumed that you have changed your name to M/s Dujodwala Resins & Terpenes Ltd, in place of M/s Dujodwala Industries and amount shall stand recovered from you by attachment and sale of your movable and immovable property."

(Emphasis supplied)

15. The response, dated 18th August, 2004, by the petitioner, to the said missive of the Assistant Collector, referred to the date of incorporation of the petitioner as a private limited Company, its subsequent re-incorporation as a deemed limited Company, and the fact that, while the petitioner's address was 1206, Vijaya Building, 12th Floor, 17, Barakhamba Road, New Delhi, the office of M/s Dujodwala Industries was located, not in Vijaya Building in New Delhi, but at 814-815, Tulsiani Chambers, 212, Nariman Point, Mumbai. It was emphasized that M/s Dujodwala Industries was a firm, while the petitioner was a limited Company, and that the petitioner had nothing to do with M/s Dujodwala Industries. The fact that Respondent No. 4 had never worked with the petitioner was also, needless to say, reiterated. The petitioner and M/s Dujodwala Industries being separate juristic entities, it was requested that the name of the petitioner be dropped from the recovery proceedings.

16. Inasmuch as the above sequence of events indicated that coercive action against the petitioner was imminent, the petitioner moved this Court by means of the present writ petition.

17. Having set out the above facts, the writ petition asserts that the award dated 07th July, 1987 did not even contain a whisper regarding the petitioner; neither was the petitioner a party to the proceedings before the Labour Court, which had culminated in passing of the said award. It is further asseverated that it was entirely impermissible to initiate, against the petitioner, proceedings for recovery of amounts

due under an award passed in respect of some other company, merely because their names happened to be “partially similar”.

18. In view thereof, the writ petition prays for issuance of a writ of prohibition, prohibiting the respondents from taking any action against the petitioner in respect of the abovementioned award dated 07th July 1987, of the Labour Court, as also for quashing of the proceedings relating to notice No.254/MW/SDM/CP/03/Recy/25 dated 23rd July, 2004 *supra*, issued to the petitioner by the Assistant Collector, Grade-I, SDM.

19. On 2nd September 2004, when the present writ petition came up before this Court for preliminary hearing, this Court directed the petitioner, in the first instance, to “*state on affidavit what connection it has, if any, with M/s Dujodwala Industries and Naval Store Corporation*”.

20. In compliance with the said direction, the petitioner filed, on 4th September, an additional affidavit, in the present proceedings, stating that

- (i) M/s Naval Stores Corporation and M/s Dujodwala Industries were partnership firms, in which some of the promoters of the petitioner-Company were partners,
- (ii) pursuant to an arbitral award dated 19th March 1982, there was a division of assets amongst the partners of the said firms,

- (iii) following thereupon, the promoters of the petitioner-Company exited the said firms *vide* separate Retirement Deeds dated 17th April 1982, drawn up in respect of M/s Naval Stores Corporation and M/s Dujodwala Industries,
- (iv) under the said Retirement Deeds, all assets and liabilities, of M/s Naval Stores Corporation and M/s Dujodwala Industries, fell to the share of the remaining partners.
- (v) since then, at least, the petitioner-Company had no relationship with either of the said firms,
- (vi) even prior thereto, the petitioner-Company was always a legal entity, separate from the said firms,
- (vii) M/s Naval Stores Corporation and M/s Dujodwala Industries were both located at 814-815, Tulsiani Chambers, 212, Nariman Point, Mumbai,
- (viii) there had never been any amalgamation/merger of M/s Naval Stores Corporation, or M/s Dujodwala Industries, with the petitioner, and
- (ix) no partner, in either of the said firms, was in any way concerned with the petitioner-Company.

21. On 22nd September 2004, a “further affidavit” was filed, by the petitioner, annexing, therewith, copies of the aforementioned two Retirement Deeds dated 17th April 1982, and asserting, in this regard, that, consequent on the drawing up of the said Retirement Deeds, (i) the petitioner was part of the R M Dujodwala Group (hereinafter referred to as “RMD group”), whereas M/s Naval Stores Corporation

was part of the V M Dujodwala Group (hereinafter referred to as VMD group”), and (ii) all liabilities of M/s Naval Stores Corporation had been taken over by the remaining partners thereof, who belonged to the V M Dujodwala Group. It was, therefore, asserted that any liability, of M/s Naval Stores Corporation, after 7th July 1987, had to be necessarily borne by the remaining partners of the said firm.

22. Following the filing, by the petitioner, of the abovementioned two affidavits, this Court, *vide* order dated 28th September 2004, issued notice on the present writ petition and also directed that, until further orders, coercive steps for recovery, pursuant to the Award dated 7th July 1987, be not taken. The said interim order continues till date.

23. On or around 10th March 2005, Respondent No. 4, who had, till then, not been arrayed as a party in the present proceedings, moved CM 3974/2005, under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”), for being impleaded as a respondent. It was emphatically asserted, in the said application, that the petitioner had played a fraud on the Court by pleading complete disassociation with the proceedings. The application asseverated, in this regard, that

(i) M/s Naval Stores Corporation, M/s Dujodwala Industries, and the petitioner, were “*being managed by the same management*” and had “*been functioning from the same premises from the very beginning*”,

- (ii) their employees were common,
- (iii) at the time of employment of Respondent No. 4, management of all the three entities was in the hands of Shri Vishamber Lal Dujodwala and Shri Ram Gopal Dujodwala, who were brothers,
- (iv) thereafter, the management of the three entities had been transferred to their successors, viz. Shri Shyam Sunder Dujodwala, s/o Shri Vishamber Lal Dujodwala, and Shri R. M. Dujodwala and Kamal Dujodwala, s/o Shri Ram Gopal Dujodwala,
- (v) the corporate office of the “*Dujodwala group of industries*” was at 1401, Prasad Chamber, 14th Floor, Near Roxy Cinema, Mumbai – 400004 and at 812, Tulsiani Chambers, 212, Nariman Point, Mumbai – 400021, with sales offices of the group spread all over the country,
- (vi) Respondent No. 4 had “*been in the employment of the petitioner*” and “*was deputed to work in M/s Naval Stores Corporation, one of the sales office of Dujodwala Industries since 12.3.1978 as a ‘Store Keeper’*”,
- (vii) the petitioner refused to give Respondent No. 4 his wages for the period December 1980 to February 1981, and, when Respondent No. 4 demanded the same, the petitioner “*got annoyed with him and illegally terminated his services in 1981*”,
- (viii) consequent on passing of the Award dated 7th July 1987 *supra*, and the initiation of recovery proceedings for enforcement thereof, “*the Management of the Petitioner*” moved the Labour Court seeking stay of the recovery proceedings, but failed,
- (ix) “*the Management of the petitioner*”, thereupon, filed Suit No. 405/89 (M/s Dujodwala Industries v Collector), before the Civil Court,

for permanent injunction against enforcement of the Award, dated 7th July 1987, against it, wherein, too, no interim injunction could be obtained,

(x) even during the pendency of the said Suit 405/89, “*the Management of Petitioner*” filed yet another suit, viz. Suit 207/91, before the Vacation Judge, seeking permanent injunction, and deliberately omitted to implead Respondent No. 4 as a party therein,

(xi) interim stay was granted, in the said Suit 207/91; however, pursuant to allowing Respondent No. 4 to be impleaded therein, the Civil Judge dismissed the suit, with costs of Rs 5000/-, *vide* order dated 5th September 2001,

(xii) the present writ petition had been filed, concealing all the above facts and without impleading Respondent No. 4, apparently with fraudulent intent,

(xiii) Shri K. L. Mittal, who was “*presently Chairman of the petitioner management*”, and “*authorized signatory of M/s Dujodwala Industry*”, had been appearing, before the Labour Court, representing M/s Naval Stores Corporation, and had also signed on its behalf,

(xiv) Respondent No. 4, though employed with M/s Naval Stores Corporation, used to append his signatures on documents of M/s Dujodwala Industries as well as of the petitioner,

(xv) before the Labour Court, M/s Naval Stores Corporation was represented by Shri R. K. Daga, who appeared as an employee of M/s Dujodwala Industries,

(xvi) the adjournment application, filed in the said proceedings by M/s Naval Stores Corporation, was on a letter-head which, albeit

purporting to be of M/s Naval Stores Corporation, also contained, above that, the seal of the Dujodwala Group of Industries, and (xvii) pursuant to his termination in 1981, Respondent No. 4 received a telegram from the Management of M/s Naval Stores Corporation, stating that one Shri Inderpal had been deputed in his place; however, notice of Challan, dated 30th May 1981, issued, *inter alia*, to the petitioner and M/s Dujodwala Industries, by the Labour Officer under the Shops and Establishments Act, 1954, showed Inderpal to be working with the petitioner.

Respondent No. 4, therefore, sought to be impleaded, in the present proceedings.

24. Reply, to the aforementioned CM 3974/2005, was filed, by the petitioner, steadfastly denying all insinuations regarding community of interest, of the petitioner, vis-à-vis M/s Naval Stores Corporation/M/s Dujodwala Industries, or any connection, of the petitioner-Company, with the industrial dispute between Respondent No. 4 and either of the said firms.

25. By order dated 28th September 2005, CM 3974/2005 was allowed and Respondent No. 4 was impleaded in the present proceedings.

26. In the meanwhile, a counter-affidavit, to the writ petition, was filed by Respondent No. 3 (the Assistant Collector). It was sought to be submitted, therein, that the writ of demand had been rightly issued

to M/s Dujodwala Industries, *“who was found to have been operating from 12th Floor, Vijaya Building, 17-Barakhamba Road, New Delhi”*. Interestingly, the counter-affidavit stated that the notice, dated 23rd July 2004 *supra*, *“was issued to the petitioner on the premise that the petitioner is the successor of M/s Dujodwala Industries and are trying to evade the payment of Govt dues”*. The basis for this “premise” is, however, not disclosed, or even inferable, from the said affidavit, or the assertions contained therein. As a passing caveat, the affidavit pleads that *“under the provisions of revenue Recovery Act the answering Respondent is bound to execute the RRC received from the authority competent to issue and recover the amount as per the law without going into the merits of the order passed by the RRC issuing authority in this case Respondent No. 1 & 2.”*

27. The said counter-affidavit, of Respondent No. 3, invited an affidavit-in-rejoinder, from the petitioner, expressing undisguised chagrin at the fact that a Recovery Certificate, issued in the name of M/s Dujodwala Industries, was being sought to be enforced against the petitioner. It was re-asserted that the petitioner had no concern with the disputes and/or claims of Respondent No. 4, against M/s Naval Stores Corporation or against M/s Dujodwala Industries.

28. Respondent No. 4 filed an independent counter-affidavit-in-opposition, essentially reiterating the contentions already advanced by him earlier (*inter alia*, in his application under Order I Rule 10 of the CPC), and contending that the “Dujodwala Group of Industries”

was controlled and managed M/s Naval Stores Corporation, M/s Dujodwala Industries and the petitioner.

29. The petitioner, in its rejoinder filed by way of response thereto, also reiterated its earlier stance, and re-invited attention to the fact that, once the partner of M/s Naval Store Corporation, Shri S.V. Dujodwala, surrendered his shareholding in the petitioner-Company, for consideration, in 1982, the petitioner ceased to have anything to do with M/s Naval Store Corporation.

30. This, then, is the factual tapestry spread out before this Court, which has, on a careful examination thereof, to rule on the sustainability of the impugned Notice, dated 23rd July 2004 *supra*, and on whether the petitioner could be visited with liability, towards Respondent No. 4, under the Award dated 7th July 1987, passed by the Labour Court in ID 20 of 1982 (Management of M/s. Naval Store Corporation v. its workman Sh. Vishambar Dutt).

31. I have heard Shri Ashok Mathur and Shri Abhay Singh, learned Counsel for the petitioner, and Respondent No. 4, respectively. Shri Mathur insists that his client is, entirely without any legal foundation whatsoever, being saddled with a liability which rightfully lies at the door of another, whereas Shri Singh exhorts this Court to pierce the corporate veil, whereupon, he asserts, it becomes immediately apparent that the petitioner and M/s Naval Stores Corporation are

integrally one entity, or, at the very least, that the former controls the latter.

32. At the very outset, it may be noted that several infirmities appear, *prima facie*, to plague the notice dated 23rd July, 2004 (*supra*), issued, to the petitioner, by the Assistant Collector. For ready reference, this communication is reproduced, once again, as under:

“Whereas a sum of Rs 386679/- is recoverable from M/s Dujodwala Industries, 12th Floor Vijaya Building, 17 Barakhamba Road New Delhi 110001 as arrear of land Revenue on account of Shri Bishambar Dutt Sharma.

M/s Dujodwala Resins & Terpenes Ltd, 12th Floor Vijaya Building, 17 Barakhamba Road, New Delhi is hereby directed to appear before the undersigned on 18.8.2004 at 11.30 A.M. without fail with all the documents otherwise it will be assumed that you have changed your name to M/s Dujodwala Resins & Terpenes Ltd, in place of M/s Dujodwala Industries and amount shall stand recovered from you by attachment and sale of your movable and immovable property.”

(Emphasis supplied)

33. This missive, on a bare perusal, is immediately seen to suffer from the following stark infirmities:

(i) *De hors* the substance thereof, the observation, in the letter, that “you have changed your name to M/s Dujodwala Resins & Terpenes Ltd in place of M/s Dujodwala Industries” is incompatible with the fact that the letter itself stood addressed, not to M/s Dujodwala Industries, but to the petitioner, viz. M/s Dujodwala Resins & Terpenes Ltd.

(ii) The statement that Rs 386679/- was recoverable from M/s Dujodwala Industries, which appears to have been based solely on the Demand Notice dated 31st October 2003 *supra*, is apparently contrary to facts, as the amount was recoverable, not from M/s Dujodwala Industries, but from M/s Naval Stores Corporation. There is, conspicuously, no reference at all, in the Notice dated 23rd July 2004, to M/s Naval Stores Corporation.

(iii) No amount, as per record, was recoverable from M/s Dujodwala Industries, “*on account of Shri Bishambar Dutt Sharma*”; indeed, there does not appear, at any point of time, to have been any lis, between Respondent No. 4 and M/s Dujodwala Industries.

(iv) The warning that follows on the above recital, in the second paragraph of the Notice, defies comprehension. It requires *the petitioner* to appear before the Assistant Collector, *with all the documents purportedly relating to Dujodwala Industries*, and cautions that, *in the event of the petitioner failing to do so*, it would be assumed that *the petitioner had changed its name to Dujodwala Industries*. To reiterate, this note of caution defies comprehension. It amounts to stating that, if Company A could not produce the document relating to Company B, it would be assumed that Company A had changed its name to B. Such an “assumption” appears, *ex hypothesi*, to be unsupportable by any principle known to law.

(v) Having threatened to arrive at such an assumption, the Notice states that the amount allegedly due, *by Dujodwala*

Industries to Respondent No. 4, would be recovered from the petitioner by attachment and sale of its movable and immovable property.

34. This Court unhesitatingly deprecates the attitude of the Assistant Collector, as reflected in the aforementioned communication dated 23rd July 2004. The above noted irregularities – which deserve to be termed as gross –stand compounded by the concluding declaration, therein, that, if the petitioner defaulted in producing all documents, it would be *assumed* that the petitioner had changed its name from M/s Dujodwala Industries Ltd to M/s Dujodwala Resins & Terpenes Ltd, and recoveries will be effected from the petitioner on that basis. Referring to this communication, the counter-affidavit of Respondent No. 3 states, somewhat starkly, thus:

“Thereafter another notice dated 23.7.2004 was issued to the petitioner on the premise that the petitioner is the successor of M/s Dujodwala Industries and are trying to evade the payment of Govt. dues.”

(Emphasis supplied)

What this affidavit, perhaps advisedly, omits to mention, is the *basis* for such a “*premise*” – which, as per the notice dated 23rd July 2004 itself, is merely the possible failure, of the petitioner, to produce the documents summoned therein. Such a rationale takes the court back to the *modus ponens* theory of propositional logic (*modus ponendo ponens*), generally summarized as “*P implies Q* and *P* is asserted to be true, so therefore *Q* must be true.” For the principle to apply, however, it is necessary that *P should imply Q*. It is this fundamental

first proposition that stands fatally disestablished in the present case. There is no basis, whatsoever, to justify the “assumption”, or “premise”, that M/s Dujodwala Resins & Terpenes Ltd was merely M/s Dujodwala Industries Ltd rechristened. This court is, in the circumstances, constrained to hold that such an “assumption” is reflective, *prima facie*, of executive high-handedness, and may even give rise to a legitimate inference of *mala fides*. I say no more.

35. Any recovery, from the petitioner – or coercive action towards such recovery, for that matter – on the basis of such a notice would, needless to say, be vitiated *ab initio*, and would deserve to be unhesitatingly abjured. Even on this sole ground, the said Notice would deserve to be quashed.

36. Such quashing, however, would leave the core dispute unresolved. Any attempt at resolving the core dispute would, in the first instance, require a juxtaposed appreciation of the Arbitration Award, dated 19th March 1982, and Deeds of Retirement, dated 17th April 1982, and the true import and effect thereof.

The Arbitration Award and Deeds of Retirement, analyzed:

37. Differences, which had arisen among the Directors of the petitioner-Company, and the partners of M/s Dujodwala Industries, M/s Resin & Terpene Industries, M/s Naval Stores Corporation, M/s Van Vanaspati Udyog, and other allied concerns, were referred to arbitration of the Sole Arbitrator Shri R.P. Poddar.

38. The award divides the *dramatis personae*, before the Arbitrator, into two distinct groups, namely

- (i) “the RMD group” consisting
 - (a) Shri Ramgopal M. Dujodwala,
 - (b) Shri Ramgopal Omprakash HUF,
 - (c) Shri Ramgopal Kamalkumar HUF,
 - (d) Shri Kamalkumar R. Dujodwala,
 - (e) Shri Kamalkumar R. Dujodwala HUF,
 - (f) Shri Omprakash R. Dujodwala,
 - (g) Shri Omprakash Vineet HUF,
 - (h) Smt. Parmeshwari Devi R. Dujodwala,
 - (i) Smt. Alka K. Dujodwala,
 - (j) Smt. Vijayalaxmi O. Dujodwala,
 - (k) Shri Pankajkumar R. Dujodwala,
 - (l) Shri Vineet O. Dujodwala,
 - (m) Shri R. O. Kanoria,
 - (n) Shri R. O. Kanoria HUF and
 - (o) Shri Dinesh R. Kanoria, and
- (ii) “the VMD” group consisting
 - (a) Shri Visheshwarlal M. Dujodwala,
 - (b) Shri Visheshwarlal Shyamsunder HUF,
 - (c) Shri Shyamsunder V. Dujodwala,
 - (d) Shri Shyamsunder Vivek HUF,
 - (e) Smt. Narmala Devi V. Dujodwala,
 - (f) Smt. Leela S. Dujodwala,

- (g) Shri Vivek S. Dujodwala and
- (h) Miss Shital S. Dujodwala.

39. To the extent relevant for the purposes of the present dispute, the Award ordained thus:

(i) The members of the VMD group, who were holding 81910 shares in the petitioner-Company, would sell and transfer the said 81910 shares to the RMD group, @ Rs 37.50 per share. *On receipt of full payment, Shri Shyamsunder V. Dujodwala would, on or before 18th April 1982, resign as Director in the petitioner-Company.*

(ii) The members of the RMD group, who were partners in the firms of the VMD group (i.e. *M/s Dujodwala Industries, M/s Resin & Terpene Industries, M/s Van Vanaspati Udyog, M/s Naval Stores Corporation and M/s Dujodwala & Sons*) *would retire from the said firms w.e.f. 18th April 1982 or earlier, and the members of the VMD Group who were already partners in the said firms would take over all assets and liabilities of the said firms as continuing partners.* The retiring partners of the RMD Group would be paid Rs 5,00,000/- as consideration for relinquishing and releasing all right, title and interest in the said firms.

(iii) *Clause IX of the Award stipulated that the continuing partners of the firms (which would include M/s Naval Stores*

Corporation and M/s Dujodwala Industries) would be responsible for all liabilities thereof. Parallely, the petitioner would be responsible for all liabilities of the petitioner.

40. Clearly, therefore, liabilities of M/s Naval Stores Corporation, which arose after 18th April 1982, would have to be discharged by the “continuing partners” of M/s Naval Stores Corporation itself. Neither the petitioner, nor any of its Directors who may, prior to 18th April 1982, have been partners in M/s Naval Stores Corporation, could be made liable therefor.

41. Consequent upon, and towards implementation of, the aforementioned covenants of the Arbitral Award dated 19th March 1982, Deeds of Retirement were drawn up, on 17th April 1982, between the “retiring partners” of M/s Dujodwala Industries and M/s Naval Stores Corporation, on the one hand, and the “continuing partners” of the said firms, on the other. The identities of the said partners may be set out, in a tabular form, thus:

Name of Firm	Retiring Partners		Continuing Partners	
Dujodwala Industries	(1)	Ramgopal M. Dujodwala	(1)	Visheshwarlal M. Dujodwala
	(2)	Omprakash R. Dujodwala	(2)	Shyamsunder V. Dujodwala
	(3)	Kamalkumar R. Dujodwala		
Naval Stores Corporation	(1)	Omprakash R. Dujodwala	(1)	Shyamsunder V. Dujodwala
	(2)	Alka K. Dujodwala	(2)	Narmada Devi V. Dujodwala
	(3)	Dinesh R. Kanoria		

42. Clause 11 of the aforementioned Retirement Deeds, dated 17th April 1982, read thus:

“The Continuing partners shall pay all debts and liabilities of the partnership firm and shall indemnify the Retiring Partners against the same and all actions proceedings claims costs and demands in respect thereof.”

43. Be it noted, here, that none of the respondents, including Respondent No. 4, has questioned the validity, or enforceability, of the aforementioned Arbitral Award, or the Deeds of Retirement drawn up in consequence thereof.

44. The cumulative consequence of the execution of the Arbitral Award, dated 19th March 1982, and the Deeds of Retirement, dated 17th April 1982, is, clearly, that any liabilities, of M/s Naval Stores Corporation, which arose after 17th April 1982 *alone*, would have to be borne by the “continuing partners” of M/s Naval Stores Corporation, i.e. Shri Shyamsunder V. Dujodwala and Smt. Narmada Devi V. Dujodwala, and by no one else. In any event, there could be no question of mulcting the petitioner-Company, or any of its Directors, with any liability in this regard.

45. *Ex facie*, therefore, the objection, of the petitioner, to the attempt, of Respondents 2 and 3, to enforce, against it, the Award dated 7th July 1987, appears well taken.

46. *De hors* the above discussion, even on first principles, the attempt of the respondents, to effect recovery, from the petitioner, of amounts payable by M/s Naval Stores Corporation, appears difficult to appreciate. M/s Naval Stores Corporation is admittedly a partnership firm, whereas the petitioner is a public limited Company, independently incorporated as a private limited Company on 17th November 1976, and had been made a deemed limited Company on 16th February 1989. No doubt, on the date of termination of Respondent No. 4 from service, i.e. 5th March 1981, some of the Directors of the petitioner-Company were partners in M/s Naval Store Corporation; yet, the fact remains that, by 7th April 1987, when the Labour Court passed its award crystallizing the liability of M/s Naval Stores Corporation qua Respondent No. 4, the petitioner-Company and M/s Naval Stores Corporation had become totally distinct, with the members of the RMD group, who were partners in the firms of the VMD group, having retired from such partnership. Clause II of the Arbitral Award, categorically states that the continuing partners of the VMD group in the firms, including *inter alia*, Dujodwala Industries and Naval Stores Corporation, will take over all the assets and liabilities of the respective firms has continuing partners and “*will pay to the retiring partners of RMD group in aggregate a sum of Rs.5,00,000/- lacs in consideration of their relinquishing and releasing all right, title and interest in the said firms*”. Additionally, Clause IX of the Arbitral Award, dated 19th March 1982, specifically stipulated that the continuing partners would discharge the liabilities of the respective firms and be responsible for the same.

Correspondingly, Clause 11 of the Deed of Retirement, dated 17th April 1982, whereby and whereunder the Directors, of the petitioner-Company retired from Ms Naval Stores Corporation, ordained that the continuing partners of M/s Naval Stores Corporation would pay all its debts and liabilities, and indemnify the retiring partners against the same and “*all actions proceedings claims costs and demands in respect thereof*”. The veracity of the Arbitral Award dated 19th March 1982, and the Deed of Retirement dated 17th April 1982, is not called into question by any of the respondents, including Respondent No. 4.

47. Respondent No. 4 has, in its counter-affidavit, worked hard at establishing commingling of interest of M/s Dujodwala Industries and M/s Naval Stores Corporation. So far as the dispute herein is concerned, however, that is neither here nor there. The liability, which is being sought to be foisted on the petitioner by Respondents 2 and 3, is not a liability which the Award dated 7th July 1987 cast on M/s Dujodwala Industries; it is a liability cast on M/s Naval Stores Corporation. In fact, M/s Dujodwala Industries appears essentially to be a stranger to the dispute, needlessly drawn into the imbroglio by the thoughtless “Writ of Demand” dated 31st October 2003 *supra* issued by the office of SDM, and the even more thoughtless “Notice”, dated 23rd July 2004, issued by the Assistant Collector. M/s Dujodwala Industries, therefore, need not detain this judgement any further, and we may, therefore, bid it a fond farewell.

48. What, then, of the veil, which learned Counsel appearing for Respondent No. 4 would have me pierce? The contention of learned Counsel, shortly stated, is that, if this Court were to “pierce the corporate veil”, and peer behind, it would become immediately apparent that an elaborate façade had been created, to avoid a liability which the law rightfully cast on the petitioner.

49. Corporate veils can legitimately be “pierced”. In order to do so, however, there must, in the first instance, exist a veil, which can be pierced.

Salomon and its sequelae, deconstructed

50. The concept of the corporate veil, and the piercing thereof, is known to owe its origin to the landmark ruling of the House of Lords in *Salomon v A Salomon & Co Ltd*, (1897) AC 22 (fondly remembered, by every student of law, as *Salomon v Salomon*). One may state, at once, that the reference, by learned Counsel for the respondent, to the doctrine, is not exactly accurate, as the eponymous “veil” referred to, therein, is the veil between a Company and its members/shareholders, and not between a Company and a partnership firm. (Indeed, the façade which, the learned Counsel for Respondent No. 4 would insist, exists, appears to be more in the nature of a smokescreen than a veil.) *Salomon (supra)*, it may be noted, ruled *against* the lifting the veil, holding that a limited Company had an independent identity, entirely distinct from its shareholders.

51. A brief look at *Salomon (supra)*, and the *ratio decidendi* thereof, may, at this stage, be instructive. *Salomon (supra)* was an appeal, to the House of Lords, from the judgement of the Court of Appeal. Salomon was a leather merchant and boot manufacturer. The respondent Company, in that case (M/s A. Salomon & Co.), was incorporated on 28th July 1892, *inter alia* for the purpose of carrying out an agreement, dated 20th July 1892, entered into between Salomon and a trustee for a Company intended to be formed, for acquisition, by such Company, of the business then carried on by Salomon. Salomon, his wife and daughter, and his four sons, each subscribed to one share in the respondent Company (M/s A. Salomon & Co.), whereafter Salomon had 20000 shares allotted to him. Against such transfer, Salomon paid 1 l per share out of the purchase money to be received for the transfer of his business to the company. The company, thereafter, became insolvent and went into liquidation.

52. An action was brought, against the company, by a debenture holder, on his behalf and on behalf of all other debenture holders of the company. A counter-claim was filed, therein, by the company, to the effect that the company was formed by Salomon, and debentures were issued so that he might carry on its business, and take all the profits without risk to himself. It was, therefore, sought to be urged, by the company in its counter-claim, that the company was the mere nominee and agent of Salomon, and that the company, or the liquidator, was, therefore, entitled to be indemnified, by Salomon,

against all debts owed by the Company to creditors other than Salomon himself.

53. *Vaughan Williams, J.*, who tried the case, held the liquidator entitled to the relief prayed for by him. He, therefore, held that the company M/s A. Salomon & Co. was merely an alias for Salomon, and that, as his mere agent, was entitled, having incurred liabilities at his instance, to be indemnified, by Salomon, thereagainst.

54. The judgment of *Vaughan Williams, J.*, was affirmed in principle, but reversed in fine, by the Court of Appeal, in that, while the finding that the company was the agent of Salomon was affirmed, the relation between them was treated as that of trustee and trust; yet, the conclusion, that the company retained a right to indemnity qua Salomon, was affirmed.

55. The decision of the Court of Appeal was unanimously overturned by the House of Lords, comprising *Lord Halsbury, L.C.*, *Lord Watson*, *Lord Herschell*, *Lord Macnaghten*, *Lord Morris* and *Lord Davey*. Without entering into the specifics of the various opinions expressed, suffice it to state that an unambiguous verdict was returned, to the effect that the company was a distinct legal entity, and could not be held to be a façade behind which the shadow of Salomon lurked.

56. This decision is unofficially recognized as the *terminus a quo* of the “corporate veil” doctrine, and the concept of “piercing” or “lifting” thereof. Adverting, *inter alia*, to *Salomon (supra)*, the Supreme Court micro-analyzed the concept, in *D.D.A. v Skipper Construction Co. (P) Ltd, (1996) 4 SCC 622*, thus (through B. P. Jeevan Reddy, J.):

“Lifting the corporate veil

24. *In Salomon v. Salomon & Co. Ltd. [1897 AC 22 : (1895-99) All ER Rep 33]* the House of Lords had observed,

“the company is at law a different person altogether from the subscribers ...; and, though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act.”

Since then, however, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is “when the corporate personality is being blatantly used as a cloak for fraud or improper conduct”. [Gower: Modern Company Law — 4th Edn. (1979) at p. 137.] Pennington (Company Law — 5th Edn. 1985 at p. 53) also states that “where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law”, the court will disregard the corporate veil. A Professor of Law, S. Ottolenghi in his article “From peeping behind the Corporate Veil, to ignoring it completely” says

“the concept of ‘piercing the veil’ in the United States is much more developed than in the UK. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that ‘when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons’. The same can be seen in various European jurisdictions.”

[(1990) 53 Modern Law Review 338]

Indeed, as far back as 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article “Piercing the veil of corporate entity” [published in (1912) XII Columbia Law Review 496] and summarised their central holding in the following words:

“The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalisation which the present state of the authorities would warrant is this: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons.”

25. In Palmer's Company Law, this topic is discussed in Part II of Vol. I. Several situations where the court will disregard the corporate veil are set out. It would be

sufficient for our purposes to quote the eighth exception. It runs:

“The courts have further shown themselves willing to ‘lifting the veil’ where the device of incorporation is used for some illegal or improper purpose.... Where a vendor of land sought to avoid the action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere ‘sham’ and made an order for specific performance against both the vendor and the company.”

Similar views have been expressed by all the commentators on the Company Law which we do not think necessary to refer to.

26. The law as stated by Palmer and Gower has been approved by this Court in **TELCO v. State of Bihar, (1964) 6 SCR 885**. The following passage from the decision is apposite:

“... Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation.”

27. In **DHN Food Distributors Ltd. v. London Borough of Tower Hamlets, (1976) 3 All ER 462**, the court of appeal dealt with a group of companies. Lord

Denning quoted with approval the statement in Gower's Company Law that

“there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group”.

The learned Master of Rolls observed that “this group is virtually the same as a partnership in which all the three companies are partners”. He called it a case of “three in one” — and, alternatively, as “one in three”.

28. *The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.”*

57. The most authoritative pronouncement on the principle of piercing the corporate veil, after ***Salomon (supra)***, is to be found in a fairly recent decision, of the Supreme Court of the United Kingdom, once again, in ***Prest v Petrodel Resources Ltd, (2013) 2 AC 415***. ***Prest*** digests and dissects a wealth of precedent available on the subject, and, thereafter, authoritatively delineates the contours of the

principle, in the following words (from the leading opinion of *Lord Sumption, LJ*):

*“16. I should first of all draw attention to the limited sense in which this issue arises at all. “Piercing the corporate veil” is an expression rather indiscriminately used to describe a number of different things. Properly speaking, it means disregarding the separate personality of the company. There is a range of situations in which the law attributes the acts or property of a company to those who control it, without disregarding its separate legal personality. The controller may be personally liable, generally in addition to the company, for something that he has done as its agent or as a joint actor. Property legally vested in a company may belong beneficially to the controller, if the arrangements in relation to the property are such as to make the company its controller’s nominee or trustee for that purpose. For specific statutory purposes, a company’s legal responsibility may be engaged by the acts or business of an associated company. Examples are the provisions of the Companies Acts governing group accounts or the rules governing infringements of competition law by “firms”, which may include groups of companies conducting the relevant business as an economic unit. Equitable remedies, such as an injunction or specific performance may be available to compel the controller whose personal legal responsibility is engaged to exercise his control in a particular way. But when we speak of piercing the corporate veil, we are not (or should not be) speaking of any of these situations, but only of those cases which are true exceptions to the rule in *Salomon v A Salomon & Co Ltd* [1897] AC 22, i.e. where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control.*

17. Most advanced legal systems recognise corporate legal personality while acknowledging some limits to its

logical implications. In civil law jurisdictions, the juridical basis of the exceptions is generally the concept of abuse of rights, to which the International Court of Justice was referring in **Case concerning Barcelona Traction, Light and Power Co Ltd (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3** when it derived from municipal law a limited principle permitting the piercing of the corporate veil in cases of misuse, fraud, malfeasance or evasion of legal obligations. These examples illustrate the breadth, at least as a matter of legal theory, of the concept of abuse of rights, which extends not just to the illegal and improper invocation of a right but to its use for some purpose collateral to that for which it exists.

18. English law has no general doctrine of this kind. But it has a variety of specific principles which achieve the same result in some cases. One of these principles is that the law defines the incidents of most legal relationships between persons (natural or artificial) on the fundamental assumption that their dealings are honest. The same legal incidents will not necessarily apply if they are not. The principle was stated in its most absolute form by Denning LJ in a famous dictum in **Lazarus Estates Ltd v Beasley [1956] 1 QB 702, 712:**

“No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever ...”

The principle is mainly familiar in the context of contracts and other consensual arrangements, in which the effect of fraud is to vitiate consent so that the transaction becomes voidable *ab initio*. But it has been applied altogether more generally, in cases which can be

rationalized only on grounds of public policy, for example to justify setting aside a public act such as a judgment, which is in no sense consensual, a jurisdiction which has existed since at least 1775: **Duchess of Kingston's Case** (1776) 2 **Smith's LC** (13th ed) 644, 646, 651. Or to abrogate a right derived from a legal status, such as marriage: **R v Secretary of State for the Home Department, Ex p Puttick**[1981] **QB** 767. Or to disapply a statutory time bar which on the face of the statute applies: **Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government** [2011] 2 **AC** 304. These decisions (and there are others) illustrate a broader principle governing cases in which the benefit of some apparently absolute legal principle has been obtained by dishonesty. The authorities show that there are limited circumstances in which the law treats the use of a company as a means of evading the law as dishonest for this purpose.

19. The question is heavily burdened by authority, much of it characterised by incautious dicta and inadequate reasoning. I propose, first, to examine those cases which seek to rationalise the case law in terms of general principle, and then to look at a number of cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil in order to identify the critical features of these cases which enabled them to do so.

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27. In my view, the principle that the court may be justified in piercing the corporate veil if a company's separate legal personality is being abused for the purpose of some relevant wrongdoing is well established in the authorities. It is true that most of the statements of principle in the authorities are obiter, because the corporate veil was not pierced. It is also true that most cases in which the corporate veil was pierced could have been decided on other grounds. But the consensus that

there are circumstances in which the court may pierce the corporate veil is impressive. I would not for my part be willing to explain that consensus out of existence. This is because I think that the recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse. I also think that provided the limits are recognised and respected, it is consistent with the general approach of English law to the problems raised by the use of legal concepts to defeat mandatory rules of law.

28. The difficulty is to identify what is a relevant wrongdoing. References to a “facade” or “sham” beg too many questions to provide a satisfactory answer. It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the “facade”, but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company’s involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. Many cases will fall into both categories, but in some circumstances the difference between them may be critical. This may be illustrated by reference to those cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil.

34. These considerations reflect the broader principle that the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement. It is not an abuse to cause a legal liability to be incurred by the company in the first place. It is not an abuse to rely on the fact (if it is a fact) that a liability is not the controller's because it is the company's. On the contrary, that is what incorporation is all about. Thus in a case like **VTB Capital v Nutritek** [2012] 2 Lloyd's Rep 313; [2013] 2 AC 337, where the argument was that the corporate veil should be pierced so as to make the controllers of a company jointly and severally liable on the company's contract, the fundamental objection to the argument was that the principle was being invoked so as to create a new liability that would not otherwise exist. The objection to that argument is obvious in the case of a consensual liability under a contract, where the ostensible contracting parties never intended that any one else should be party to it. But the objection would have been just as strong if the liability in question had not been consensual.

35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate

veil. Like Munby J in *Ben Hashem v Al Shayif* [2009] 1 FLR 115, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course. I therefore disagree with the Court of Appeal in *VTB Capital v Nutritek* [2012] 2 Lloyd's Rep 313 who suggested otherwise at para 79. For all of these reasons, the principle has been recognised far more often than it has been applied. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy.

36. In the present case, Moylan J held that he could not pierce the corporate veil under the general law without some relevant impropriety, and declined to find that there was any. In my view he was right about this. The husband has acted improperly in many ways. In the first place, he has misapplied the assets of his companies for his own benefit, but in doing that he was neither concealing nor evading any legal obligation owed to his wife. Nor, more generally, was he concealing or evading the law relating to the distribution of assets of a marriage on its dissolution. It cannot follow that the court should disregard the legal personality of the companies with the same insouciance as he did. Secondly, the husband has made use of the opacity of the Petrodel Group's corporate structure to deny being its owner. But that, as the judge pointed out, at para 219, "is simply [the] husband giving false evidence". It may engage what I have called the concealment principle, but that simply means that the court must ascertain the truth that he has concealed, as it has done. The problem in the present case is that the legal interest in the properties is vested in the companies and not in the husband. They were vested in the companies long before the marriage broke up. Whatever the husband's reasons for

organising things in that way, there is no evidence that he was seeking to avoid any obligation which is relevant in these proceedings. The judge found that his purpose was “wealth protection and the avoidance of tax”: para 218. It follows that the piercing of the corporate veil cannot be justified in this case by reference to any general principle of law.”

(Emphasis supplied)

58. Does the present case, then, qualify to be included in that “small residual category of cases” in which the “corporate veil” of the petitioner should be pierced, or lifted, and the liability, otherwise obviously on M/s Naval Stores Corporation, be cast on the petitioner? In my considered opinion, the answer has definitively, and necessarily, to be in the negative. In the first place, the concept of piercing (or lifting) of the corporate veil, *per se*, applies to the liability of a shareholder vis-à-vis a Company, and not to a company vis-à-vis a partnership firm. That apart, the petitioner was a company independently incorporated as far as back as in 1976, with its own independent corporate personality. It is not even sought to be – indeed, it cannot be – even remotely suggested that the corporate personality assumed by the petitioner was a device aimed at avoiding any legal obligation. The independent corporate personality of the petitioner, therefore, has necessarily to be acknowledged and respected. The Arbitration Award, dated 19th March 1982, followed by the Deeds of Retirement dated 17th April 1982, resulted in the effective and complete severance of the petitioner and M/s Naval Stores Corporation. The liability of M/s Naval Stores Corporation,

towards Respondent No. 4, crystallized much thereafter, with the passing of the Award on 7th July 1987. Even at the time when Respondent No. 4 was terminated, for that matter, the corporate identity of the petitioner-Company was distinct from the identity of M/s Naval Stores Corporation as a partnership firm, and it could hardly be said that the former was a façade created to mask the liability of the latter. While this court is sympathetic to the cause of Respondent No. 4, it cannot, merely for that reason, do manifest violence to all legal principles and require the petitioner to bear a liability cast, by a judicial order, on M/s Naval Stores Corporation. All the considerations cited by learned Counsel for Respondent No. 4, even seen cumulatively, cannot justify such an outcome. We are no longer in Biblical times. Each has to suffer his own destined Purgatory; our law does not permit Adam to be visited with the sins of Eve. Or, for that matter, vice versa.

59. *Per sequitur*, the impugned Notice No. 254/MW/SDM/CP/03/Recy/25, dated 23rd July 2004, has necessarily to be quashed. It is ordered accordingly.

60. The respondents shall, consequently, not seek to enforce, against the petitioner, any liability consequent on the Award, dated 7th July 1987 *supra*.

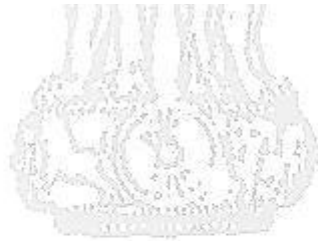
61. It is clarified that this order does not examine, or rule upon, the relationship between M/s Dujodwala Industries and M/s Naval Stores

Corporation, as, in my opinion, it is entirely unnecessary to do so. Neither, consequently, would anything contained in this order preclude Respondent No. 4 from any claim which he may choose to make against M/s Dujodwala Industries, if so advised, or influence the adjudication of any such claim, if preferred.

62. The writ petition is allowed, in the above terms, with no order as to costs.

**C. HARI SHANKAR
(JUDGE)**

SEPTEMBER 14, 2017
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