

Judgment on : **21.08.2023.**

CHITTA RANJAN DASH, J.:-

1. As both these appeals arise out of a common Judgement passed in two writ petitions, both the appeals are disposed of by this common Judgement.

2. Before advertng to the facts of the case it is beneficial to mention here that no affidavit had been filed on behalf of the State (present appellant in both the appeals) in either of the two writ petitions. Learned Counsel appearing for the State before the Hon'ble Single Judge had agreed for disposal of the two writ petitions without affidavits being filed on the ground that arguments have to be advanced on question of law only.

3. A compendium of facts relevant for disposal of these appeals is as follows:

Approximately 16.95 acres of land was leased out in favour of Pfizer India Limited in the year 1989 and the lease deed was executed on 04.01.1989. The tenure of the said lease was 999 years as specified in Clause 1 of the lease deed (Annexure P1) in writ petition no. 24788 (W) of 2010. The unit owned by original lessee Pfizer India Limited with the land and structure standing thereon was transferred to Dabur India Limited on 07.05.1996. Subsequently, through a process of demerger the Pharmaceutical business of Dabur India Limited was segregated and that part of the operation of Dabur India Limited came under another company in the name and style of Dabur Pharma Limited. This scheme of arrangement in this regard was approved by the Hon'ble High Court of Delhi on 17.10.2003. Dabur Pharma Limited thereafter applied for recording its name as a lessee of the aforesaid plot originally leased out to Pfizer India Limited and

subsequently transferred to Dabur India Limited. Such application for recording of the name of Dabur Pharma Limited was allowed by the competent authority of the State Government on 15.03.2005.

3.1. The original promoters of Dabur Pharma Limited who were holding 64.34% of the total equity shares in that company thereafter transferred their stake in the company to Fresenius Kabi (Singapore) PTE Ltd., a company organised under the laws of Singapore. This transfer of equity shares was effected on 11.08.2008. Thereafter, the corporate name of Dabur Pharma Limited was changed to Fresenius Kabi Oncology Ltd. (respondent no.1 in both the appeals).

3.2. A fresh certificate of incorporation was issued by the Registrar of Companies, national capital territory of Delhi and Haryana on 09.01.2009 vide Annexure P5 in WP No. 24788 (W) of 2010. The respondent company in both the appeals is subsidiary of the Singapore based company.

4. The dispute between the respondent company and the appellant State arose when the respondent company applied for recordal of change of name of the lessee in respect of the subject plot. Such application was made on 06.01.2010 and the Estate Manager, Kalyani Urban Development Department, Government of West Bengal asked for deposit of Rs. 15,37,66,667/- as transfer permission fee on the basis of notification dated 18.12.2007 for effecting such change. A copy of the said notification is at page 68 of WP No. 24788 (W) of 2010. The aforesaid notification of 2007 contemplates deposit of fees for transfer of "lease hold rights" for different categories of land in Kalyani Township. The transfer fee from the respondent company has been demanded in terms of the circular of December 2007.

5. Further the jurisdictional District Magistrate did not give permission to the respondent company for storage and use of Hexene etc. (which is the raw material for production of medicine by the respondent company) under the provision of the West Bengal Solvent, Raffinate, Slop and other Equivalent Petroleum Products (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000 ('the 2000 order' for short).

6. Two writ petitions were, therefore, filed. The first one was filed by respondent no.1 company challenging the demand of transfer fee under the circular dated 18.12.2007. The second writ petition was filed by respondent no.1 company along with one of the employees challenging the order of jurisdictional District Magistrate refusing storage and use of Hexene etc.

6.1. It is beneficial to mention here that the jurisdictional District Magistrate passed the order dated 12.08.2014 impugned in WPA No. 28732 of 2015 on the ground that the transfer fees by the respondent company has not been paid and the "change of name" has not been effected.

7. The main case of the respondent before Hon'ble Single Judge was that "change of name" of a company does not constitute transfer of lease hold right or any asset of the company in that regard.

8. Mr. Basu, learned Senior Counsel who appeared for the writ petitioner company, is also appearing for the respondent here, relied on the Judgement of Hon'ble The Supreme Court in **Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay** (AIR 1955 SC 74) and this court in **Kalipada Sinha Vs. Mahalaxmi Bank Ltd.** (AIR 1966 Cal 585); **W.H. Targett (India) Limited Vs. S.**

Ashraf [2008 (3) Cal LT 362] and an unreported Judgement passed in **M/s Din Chemicals and Coatings Pvt. Ltd. & Anr. Vs. The State of West Bengal & Ors.** [WP. No. 18668 (W) of 2012 disposed of on 05.10.2012].

8.1. Mr. Susovan Sengupta, who appeared before the Hon'ble Single Judge on behalf of the State and appears for the appellant in these appeals, submitted before Hon'ble Single Judge that on change of equity share holding pattern, bringing a new set of share holders in the controlling position of the company in substance has resulted in transfer of ownership and control of the company and such change should be treated to have resulted in transfer of assets of the company. According to him the leasehold right was shifting from one entity to another, and for this reason transfer fee was payable under the circular dated 18.12.2007. He further submitted that this is a case where there is simultaneous transfer of assets including leasehold right from one entity to another along with "change of name". He relied on Judgement of this Court in **Emami Biotech Limited & Anr. Vs. State of West Bengal** [2012 (3) CHN 108]. Mr. Sengupta further relying on **New Horizons Ltd. Vs. Union of India** [1995 (1) SCC 478] urged before Hon'ble Single Judge to lift the corporate veil in the case to examine the actual intention of the share holders of the transferee company in transferring the bulk of equity shares in favour of the present respondent company.

9. Hon'ble Single Judge after hearing the parties at length returned the findings as follows:

- (i) "..... **Whatever transfer had taken place was at that point of time between the two**

entities. The consequential act of change of corporate name of the company is sought to be treated as transfer of leasehold right of the company and transfer fee is sought to be charged on that incident or event. This, in my opinion is not permissible. To borrow the terminology from the fiscal jurisprudence, what is being subjected to transfer fee is the incidence of “change of name” of the company. Such a situation cannot come within the ambit of the expression “transfer of leasehold right” as stipulated in the notification of 18.12.2007. The ratio of the Judgement of this Court in the case Emami Biotech Limited, is not applicable in the fact of this case, as transfer fee is not being charged on any instrument of transfer, but on the basis of request for recordal of change of corporate name. It has not been argued by the State that the very act of transfer of equity holding of the promoter group gives rise to the obligation of the company to pay transfer fee.

(ii) This stand of the State I am unable to accept. I am not entering into the question in this writ petition as to whether the transfer of majority equity holding of a company would result in transfer of assets of the company or not because that is not the lis which has arisen in these two proceedings, though the State has referred to that dispute tangentially. On permitting recordal of Dabur Pharma Limited as the lessee on 15th March, 2005 the State had recognized independent juridical entity of Dabur Pharma Limited as a lessee. Subsequently, change of the promoter group, which eventually led to the change of corporate name, in my opinion, cannot saddle the petitioner company with an independent obligation to pay transfer fee. That would result in combining distinct identity of the shareholders with that of the company, which can be done on certain exceptional circumstances. This dispute does not require lifting of corporate veil, for the reasons I have already discussed. I accordingly hold that no

demand for transfer fee can be raised on the petitioner company as a condition precedent for recordal of its name as a lessee, on the ground that there has been transfer of leasehold right. The licence of the petitioner company cannot be withheld under “the 2000 Order” also for this reason.”

On the basis of the aforesaid findings Hon’ble Single Judge quashed the impugned orders in both the writ petitions and allowed the same.

10. Against such order these appeals have been filed. In the appeal the sole contention raised by Mr. Susovan Sengupta, learned Counsel for the State is that this is a fit case where corporate veil should be lifted as behind the “change of name” there must be some arrangement which ultimately affects the revenue, the State is entitled to receive from the respondent company.

11. Mr. Basu, learned senior Counsel appearing for the respondents in both the appeals stick to his argument advanced before Hon’ble Single Judge and submits that this is a clear case of “change of name” there being clear distinction between the company and its share holders. It is further submitted by him that the “change of name” has been recognised by the competent authority under the Companies Act, 1956 under Section 21 thereof and it is the corporate practice also that in case of transfer of more than 50% of equity shares the transferee share holders of more than 50% of equity shares has the privilege to “change the name” though the

liability etc. of the company remains the same under Section 23 of the Companies Act, 1956.

12. Incorporation of an organisation by registration was presented in 1844 and the precept of limited liability of an organisation followed in 1855. In this manner in 1897 in ***Salomon Vs. Salomon & Company*** (1897 A.C.22), the House of Lords influenced these establishments and solidified into English law the twin ideas of limited liability and corporate entity. All things considered, the House of Lords set out the rule that an organisation is a distinct legitimate person altogether not the same as the members of that organisation. This guideline is alluded to as the “**veil of incorporation**”.

The same principle has come to be recognised by Constitution Bench of Hon’ble Supreme Court in ***Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*** (AIR 1955 SC 74) and ***Sholapur Mills*** case (1950 SCR 869). In paragraph 7 of the Judgement Hon’ble The Supreme Court has referred to ***Sholapur Mills*** case *supra* and has held thus in the context of that case (***Bacha F. Guzdar***) which was related to nature of agriculture income and whether the dividend received by the assessee was agriculture income and as such exempt under relevant provision of Income Tax Act.

“..... **The company is a juristic person and is distinct from the share holders. It is the company which owns the property and not the share holders.**”

In the case of Electronics Corporation of India Limited & Ors. Vs. Secretary Revenue Department, Government of Andhra Pradesh & Ors. [1999 (4) SCC 458] another constitution Bench of Hon'ble Supreme Court in paragraph 15 of the Judgment held thus:

“A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.”

In the case of *Prasad Technology Park (P) Ltd. Vs. Sub-Registrar & Ors.* [2006 (1) SCC 473] the question before Hon'ble Supreme Court was as to whether stamp duty is payable on lease to registered company changing its own name so as to be indicative of its new business. After thorough discussion in paragraph 11 of the said Judgement, Hon'ble The Supreme Court came to hold that **“change of name” of company does not involve any transfer and accordingly the claim of the State was negatived.** On the same issue, there are some Judgements of our own High Court, which we would like to make a reference to i.e. *Din Chemicals and Coatings Pvt. Ltd. & Anr. Vs. The State of West Bengal & Ors.* [WP No. 18668 (W) of 2012] disposed of on 05.10.2012. *Gopi Vallabh Solutions Private*

Limited & Anr. Vs. State of West Bengal & Ors. [2018 SCC Online CAL 9035]

where in paragraph 11 of the Judgement this Court has held thus :

“..... I will content myself with only one observation - I would have thought that the law is well settled that by a change of name of a company under the provisions of the Companies Act, 1956, which is contemporaneously considered to be a change and not a transfer of one company to another, there is no change of legal personality and therefore there is no requirement to rectify any deed to effect mutation of the changed name in the records of rights or land records.”

(Gopi Vallabh Solutions Private Ltd. supra)

13. From the aforesaid discussion it is clear and no more *res integra* that the organisation/corporation is a juristic person and is distinct from the share holders. It is the company which holds the property and not the share holders. On this analogy, in our considered view, Hon'ble Single Judge has come to a right finding so far as claim of revenue by the State on the basis of circular dated 18.12.2007 for “change of name” of the company is concerned.

14. Now it is to be seen whether the submission of Mr. Sengupta, learned Counsel for the State regarding lifting of corporate veil can be acceded.

In the case of ***Rustom Cavasjee Cooper Vs. Union of India*** (AIR 1970 SC 564) it was held by Hon'ble The Supreme Court that a company registered under the Companies Act is a legal person, separate and distinct from its individual members, property of the company is not the property of the share holders. This feature of "veil of incorporation" was first found as discussed *supra* in the case of ***Salomon Vs. Saloman & Company Ltd.***

15. From the discussion *supra* it is now clear that company enjoys a separate position from that of position of its owners. It is artificial but yet a juristic person in eyes of law. Problems arise when this position of the company is misused. It is not incorrect to say that though the company is an unreal person, but still it cannot act on its own. There has to be some human agency involved so that company is able to perform its functions. When this human agency is working, in the name of the company, for achieving goals and targets approved by law, the social order should not be disturbed. But when this medium of operation begins to be tainted, conflict arise. When directors or whosoever be in charge of company start committing fraud or illegal activity or even activities outside purview of the objective (articles of the association forming the company), principle of lifting the corporate veil or piercing the corporate veil becomes necessary. In common parlance, it means, disregarding the corporate personality of a company, in order to look behind the scene, to determine who the real culprit of the offence committed is. Thus wherever this personality of the company is employed for the purpose of committing illegality or for defrauding others, Courts have authority to

ignore the corporate character and look at the reality behind the corporate veil in order to ensure justice or for that matter complete justice. However this approach of judiciary in breaking upon the corporate shell is somewhat to be with care and circumspection.

Piercing the corporate veil is one of the most widely used concepts to determine when can the shareholders of the company be liable for the obligation of the corporation. Piercing the corporate veil means disregarding the corporate personality and looking for the real person who is in the control of the company. A corporation/company is considered to have a separate entity as a general rule, but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, defend crime or avoid revenue/tax and so on, the law will regard the corporation/company as an association of persons ignoring “**veil of incorporation**” as propounded in ***Salomon Vs. Saloman & Co. Supra.***

16. In ***LIC of India Vs. Escorts Ltd. & Ors.*** [AIR 1986 SC 1370] Hon’ble The Supreme Court laid down two major instances when the corporate veil is to be lifted. These are (i) **statutory provisions** and (ii) **judicial grounds**.

Statutory provisions as quoted *supra* refers to different provisions in the Companies Act like officer in default, reduction of membership, improper use of name, fraudulent conduct, failure to refund application money etc.

So far as judicial grounds are concerned in the case of ***VTB Capital PLC Vs. Nutritek International Corp.*** (2012 EWCA CIV 808) corporate veil was lifted by the Court for fraud, improper conduct on the part of the directors in obtaining loan fraudulently. In the famous case of Vodafone International Holdings BV Vs.

Union of India & Anr. [SLP (C) No. 26529 of 2010] disposed of on 20.01.2012, Hon'ble The Supreme Court pierced through the veil of the corporate structure formed to evade the taxes. The Apex Court in this case observed thus:

“Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interest of the shareholders, investors, parties to the contract and also for tax evasion, the Court can always lift the corporate veil and examine the substance of the transaction”.

17. In the State of U.P. & Anr. Vs. Renusagar Power Co. & Ors. (AIR 1988 SC 1737). The question before the Hon'ble Supreme Court was whether Hindalco is the parent company and the respondent Renusagar Power Co. is a subsidiary of the parent company Hindalco? Whether power generated by Hindalco from its subsidiary Renusagar Power Co. can be held to be from its own source of generation especially when Eclectic energy generated by the subsidiary was wholly consumed by its parent company? In this case the Constitution Bench of Hon'ble The Supreme Court lifted the corporate veil and in paragraph 63, 64, 65 and 66 has held thus:

“63. It is hightime to reiterate that in the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the

situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly-owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have

treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order of the profits of Renusagar have been treated as the profits of Hindalco.

64. In the aforesaid view of the matter we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall under section 3(1)(c) of the Act. The learned Additional Advocate-General for the State relied on several decisions, some of which have been noted.

65. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon's case still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji

in the New Jurisprudence. (Tagore Law Lecture 183).

66. It appears to us, however, that as mentioned the concept of lifting the corporate veil is a changing concept and is of expanding horizons. We think that the appellant was in error in not treating Renusagar's power plant as the power plant of Hindalco and not treating it as the own source of energy. The respondent is liable to duty on the same and on that footing alone; this is evident in view of the principles enunciated and the doctrine now established by way of decision of this Court in Life Insurance Corp'n of India, (supra) that in the facts of this case sections 3(1)(c) and 4(1)(c) of the Act are to be interpreted accordingly. The person generating and consuming energy were the same and the corporate veil should be lifted. In the facts of this case Hindalco and Renusagar were inextricably linked up together. Renusagar had in reality no separate and independent existence apart from and independent of Hindalco."

18. Having regard to the discussion as aforesaid and the authoritative pronouncement of Hon'ble The Supreme Court, we are of the view that the appropriate authority of the State Government or the Court have the necessary jurisdiction to lift the corporate veil or pierce the corporate veil but a case should be made out before the Court for the same.

19. "Change of name" of company is not new to company/corporate jurisprudence. We have referred to two earlier cases of this Court one in 2012 and another in 2018 where change of name of company has been allowed and in the case of 2018 the prayer of the State to lift the corporate veil has been negated as in the instant impugned order. "Change of name" of the company is also recognised in Section 21 and 23 of the Companies Act, 1956 while Section 21 refers to the ministerial act of the competent authority, Section 23 refers to liability etc. of the company.

20. In the instant case on two occasions "change of name" has been allowed i.e. first when Pfizer India Limited transferred the leasehold property with land and standing structure thereon to Dabur India Limited; secondly when Dabur India Limited through a process of demerger created a new company in the name of Dabur Pharma which came to possession of the aforesaid leasehold property with standing structure thereon. According to the respondent company Dabur Pharma Limited had a holding of 64.34% of total equity share in that company. Said quantum of share was transferred to respondent company. On such transfer respondent company being the majority shareholder applied for "change of name" and competent authority under the Companies Act, 1956 allowed such "change of

name” under Section 21 of the Companies Act, 1956. On “change of name” in the register, the respondent company applied to competent authority of the State Government for “change of name” in the revenue records. The problem started as the circular dated 18.12.2007 had already come into force which sought to levy transfer fees on “**transfer of leasehold right**” of different categories of land in Kalyani Township. The question that falls for consideration is whether **incidence** of “change of name” of a company falls within the expression of “**transfer of leasehold right**”. Hon’ble Single Judge on careful consideration of the matter has categorically come to finding that **incidence** of “**change of name**” of a company does not fall within **incidence** of “**transfer of leasehold right**”.

21. In the present case the State has not filed any counter-affidavit. Orally a case is tried to be made out to the effect that State is going to lose huge revenue towards transfer fees as clandestinely the respondent company in the guise of “change of name” is capturing the leasehold right over the land. Such a submission without facts being asserted in an affidavit of opposition sounds to be too spacious. By “change of name” of company on the ground of change of pattern in share holding does not change the nature and character of the company and there is no transfer of any property as stipulated in Section 105 or Section 54 of the Transfer of Property Act by “change of name” of the company which is a juristic person in itself. In such a case the well-established protection of “veil of incorporation” as enunciated by House of Lords in the case of **Salomon Vs. Salomon & Company** and followed in India by Hon’ble The Supreme Court and other High Courts as discussed *supra* should not be pierced or lifted. In the

present case we do not find any material of any kind of fraud or any other grounds as discussed *supra* to go behind the corporate identity of the Dabur Pharma or that of respondent company when it is specifically asserted that Dabur Pharma having sold all its shares to the respondent company, the respondent company just wants “change of name” in the revenue records.

22. In common parlance, if a person changes his name through an affidavit, though his name gets changed, his character, persona etc. remain the same. Likewise, with the change of pattern of shareholding, the company as a juristic person does not get affected. In place of “A”, “B” may come to be the major share holder but the company remains the same. If “B” by virtue of quantum of share holding wants change of name of the company, the juristic persona of the company does not change by such “change of name”.

23. In view of the discussion *supra* we do not find any merit in both the appeals and both the appeals are accordingly dismissed. The impugned common Judgement passed by Hon’ble Single Judge in both the writ petitions are hereby affirmed. The appellants are directed to implement the impugned common Judgement passed by Hon’ble Single Judge in WP No. 24788 (W) of 2010 and WPA No. 28732 of 2015 within 15 days from the date of receipt of copy of this order.

24. There shall be, however, no order as to costs.

25. Pronounced in open Court on this 21st day of August, 2023.

26. In view of disposal of the appeals the interim application being CAN 1 of 2022 is also disposed of.

27. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)