IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Reserved On :03.10.2024
CWP-26130 of 2021(O&M)
Date of decision: 15.10.2024

M/s Maanjali Cotex Pvt. Ltd. ...Petitioner

VERSUS

State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Divyam Singh, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. R.S. Longia, Advocate for respondents No.2 and 3.

Mr. Ajay Ghangas, Advocate for respondent No.4.

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VINOD S. BHARDWAJ, J.

(1) Challenge in the present petition is to the memo no. 3749 dated 12.10.2021**(Annexure P-1)**; memo no. 4026 dated 10.11.2021**(Annexure P-3)** and to the memo no. 4209 dated 09.12.2021 **(Annexure P-5)** whereby recovery of Rs. 44,21,108 has been demanded against the electricity account of the petitioner.

Facts of the case: -

(2) The petitioner-Private Limited Company has challenged the recovery notice bearing memo No.3749 dated 12.10.2021 demanding defaulting amount of Rs.30,38,863/- having been claimed wrongfully against account No.3543011000 under Samalkha Sub-Division. The memo itself is in reference and continuation of memo No.15 dated

07.10.2021 issued by SDO, Samalkha alleging that account of a firm run by the petitioner got affected a "Permanent Disconnection Order" (PDCO) on defaulting amount of Rs.30,35,563/-. It is averred that the petitioner was called upon to show cause within 07 days about the above account and the defaulting amount failing which it would be claimed against his existing account No.1196836491 running at Israna (Panipat).

(3) It is averred that the officials of the Distribution Licensee were in default in allowing accumulation of such huge arrears and that liability ought to be recovered from them.

(4) It is also averred that defaulting can be transferred to other Section under instruction 7.3, Point 4 only if it is the same consumer. He claim that while account at Samalkha Sub Division was in the name of Shyam Cotspin, the instant account is in the name of M/s Ma Anjali. Being different consumers, the account thus could not be transferred to another Section.

(5) It is averred that on receipt of the recovery memo No.3749 dated 12.10.2021, the petitioner sent the reply dated 10.11.2021 raising the above objection and being a different entity. It was denied that petitioner never used the connection No.3543011000 or stood as a guarantor or surety and that he never suffered a PDCO, but the recovery notice vide memo No.4209 dated 09.12.2021 has still been raised for the sum of Rs.44,21,108/-

(6) Aggrieved against the above decision of recovering the defaulted amount of Account no. 3543011000 from the petitioner's Account no. 1196836491, the present petition is preferred.

Reply by respondent no. 1: -

(7) Respondent no. 1 has averred that it is pro-forma respondent and the dispute is inter-se between the petitioner and respondent no. 2 to 4 which are the contesting parties.

Reply by respondent no. 2 & 3: -

(8) Respondents no. 2&3 submits that the present petition has been filed with malicious intent and in order to dupe the respondent distribution licensee from getting its dues. The petitioner has not approached this court with clean hands and is trying to take advantage of his own wrong and it has not disclosed material facts or brought on record relevant materials that are necessary for the adjudication of the present case.

(9) It is averred that the contention of the petitioner of levying it with the recovery of another account number without any rhyme or reason is totally baseless and the reason for doing the same are: -

(a) One Vijay Kumar (Vijay Gupta @ Vijay Kumar Gupta) applied for an electricity connection No. 3543011000 at Samalkha Sub Division in the name of Shree Shyam Cotspin Limited against which electricity connection with account no. 3543011000 was issued and the same very Vijay Kumar (Vijay Gupta @ Vijay Kumar Gupta) actually applied for electricity connection No. 1196836491 at Israna Sub Division in the name of the petitioner firm against which the above electricity connection was issued. Both the applications for release of electricity connection are annexed herein as **Annexure R-1 & R-4.**

(b) Vijay Kumar (Vijay Gupta @ Vijay Kumar Gupta) was the owner and in management and control of Shree Shyam Cotspin Limited and he is also the director and person in management and control of the present petitioner company.

(c) The registered office of the petitioner company and the Shree Shyam Cotspin Limited is the same i.e. House No. 2321, Gali No.- 4, Shiv Nagar, Panipat, Haryana.

(10) It is averred that the above-mentioned reasons are enough to show that the present petitioner and the company M/s Shyam Cotspin, whose dues have been transferred on the petitioner electricity connection, are one and the same. It is also averred that in order to tackle with such issues and to deal with such consumers, the respondent distribution licensee has consciously made a provision under Section 7 i.e. RECOVERY OF UNPAID DUES FROM DEFAULTING CONSUMERS, instruction 7.3 point 5 of the Electricity Supply Instruction Manual which provides that *“The balance dues, if any, should be transferred to any other connection, which may be held in the name of the same consumer.”*

(11) It is also stated that the argument of the petitioner by interpreting the term *“in the name of the same consumer”* is short sighted and rather it is to be construed that the one who applies for it and is in actual control of the undertaking for which electricity connection is issued is to be termed as same consumer. By no far-fetch imagination name of two companies could be same but they can be managed and controlled by

same entity and thus the reliance of the petitioner on the internal communication of the respondents does not provide any aid or strength to its argument.

(12) It is also stated that the respondent distribution licensee is conscious of such consumers who play tricks to dupe on the defaulting amount and therefore necessary checks and balances are already in place. It further states that a proper opportunity to explain the position was granted to the petitioner and the dues were transferred only after following the due procedure. It was only when the said Vijay Kumar as owner of Shree Shyam Cotspin Ltd did not pay the electricity bills of that company and the total amount of arrears of bills swelled to Rs44,21,108 and the connection was disconnected for non-payment of dues that the dues have been transferred. Even the landlord (present respondent no. 4) of the petitioner i.e. owner of the House No. 232/1, Gali No. 4, Shiv Nagar, Panipat was also facing difficulty in getting new independent electricity connection due to which a dispute arose between both the parties for which a Panchayat was convened and settlement was arrived at between both the parties on 29.12.2021 with the intervention of the panchayat. A perusal of the same showed that Ajay Gupta and Vijay Gupta, both brothers, have been shown as owners of Shree Shyam Cotspin House No232/1, Gali No. 4, Shiv Nagar, Panipat and they being owners of the petitioner company agreed to pay and clear the entire arrears of rent and electricity bills of that company which they did not. Copy of the Panchayat settlement is annexed herewith as **Annexure R-7.** It is prayed that no intervention against the levying of amount on the present

petitioner electricity connection is wanted and the petition should be dismissed.

Reply by Respondent no. 4: -

(13) Respondent no. 4 has reiterated similar submission as averred by respondents no. 2 & 3 and has stated that Vijay Kumar is very clever person and he in connivance with the officials of the electricity department did not pay the electricity bills and due to this reason huge defaulting amount got accumulated. Thus, Vijay Kumar owner of Shree Shyam Cotspin Limited neither paid the rent to the respondent nor paid the electricity bills of the said premises. Thereafter Panchayat was convened and compromise was effected between the parties and Vijay Kumar and Ajay Gupta agreed to pay the balance rent to the respondent and also agreed to pay the pending electricity bills of the electricity connection installed at the premises of the applicant and also agreed to obtain NOC from the electricity department. However, nothing was done by them.

(14) It is stated that Vijay Kumar is the owner of Shree Shyam Cotspin Limited and he is also one of the Directors of M/s Maanjali Cotex Pvt. Ltd. and therefore the respondent no. 2&3 have rightly taken action of transferring the said due amount to the present petitioner electricity connection as in reality they are owned and operated by one and the same person having same registered address.

(15) It is submitted that due to the act of fraud played by Vijay Gupta, the respondent could not get new electricity connection for the said rented premises and have suffered irreparable loss and the present petition

is a facade to run away from the actual accrued liability by making individuals like respondents as scapegoat. He prays for the dismissal of the present petition with exemplary costs being awarded in favour of the respondent.

<u>Arguments by the petitioner: -</u>

(16) Learned counsel for the petitioner contends that the petitioner is a separate/distinct legal entity duly registered as a private limited company and having its registered office at Panipat, Haryana. He contends that the petitioner is having electricity connection bearing Account no. 1196836491 and running under the sub-division Israna, UHBVN, Distt. Panipat and is regularly paying its electricity dues as generated from time to time and has no outstanding against the said electricity connection.

(17) He vehemently contends that, without any rhyme or reason, the defaulting amount of one electricity Account no. 3543011000 has been levied against the petitioner's electricity connection even though the aforementioned electricity account number was issued to one firm/company namely M/s Shree Shyam Cotspin which is a separate legal entity and has no concern or relation with the present entity nor it is a sister concern of the petitioner.

(18) He contends that vide impugned memo(s) issued by respondent no. 2, he has shifted the complete liability of outstanding amount against the electricity connection of M/s Shree Shyam Cotspin upon the petitioner even though vide memo no. 3895 dated 27.10.2021 it was specifically stated by him after referring to Sales Manual 2005 issued by the respondent distribution licensee that under Section 7 i.e.

RECOVERY OF UNPAID DUES FROM DEFAULTING CONSUMERS, instruction 7.3 point 5 (wrongly mentioned as point 4) provides that *"The balance dues, if any, should be transferred to any other connection, which may be held in the name of the same consumer."* and since the connections were issued under two different names therefore liability could not have been attributed upon the petitioner.

(19) He contends that the transfer of liability upon the petitioner is ex-facie bad in law and recovery if any could have been done by following the due procedure and against the premises in question by resorting to levying of charge on the property or under the land recovery act if deemed appropriate.

(20) No other argument or judgment has been cited by the petitioner.

Arguments by the respondents:

(21) Counsel for the respondents have reiterated their respective submissions noticed earlier and have argued that the petitioner has not come to this Court with clean hands and he has concealed the true facts. He claims to have never used the electricity in Samalkha whereas both these companies are intrinsically the same entity.

(22) It is argued that not only both the companies are situated at the same address but also the electricity connection application in both the cases is in the name of Vijay Kumar himself. The present petition has been got filed by him through his wife who is shown as a Director. The petitioner thus is avoiding his liability, despite agreeing to discharge the

same in a settlement and as a result thereof, the landlord is also suffering immense hardship and harassment.

(23) The petitioner was given due opportunity and a reasoned order had been passed thereafter. It was specifically noticed that both the consumers are essentially the same entity and that acceptance of such a defence would only give rise to an increased mischief by the defaulters to avoid payment of its liability merely by incorporating a new juristic entity. The same could not have been the intent of law or the legislature.

(24) No other argument has been raised or judgment have been cited by any party.

Consideration: -

(25) I have gone through the documents available on record and the facts of the case with able assistance of counsel for the parties.

(26) The undisputed facts that arise from the present petition is that Vijay Gupta is the applicant for both the electricity connection bearing no. 3543011000 (M/s Shree Shyam Cotspin Ltd.) & 11976836491(present petitioner). It is also not disputed that there are outstanding dues against M/s Shyam Cotspin. Further, there is no denial to the settlement amongst parties as per which Vijay Kumar and Ajay Kumar had undertaken the liability and to discharge the same. Even though the replies were filed in the year 2022 and 2023 respectively but no replication denying the facts pleaded in the written statement was filed.

(27) It is also not disputed that the regd. address of both the companies happens to be the same and wife of Vijay Kumar is the Director of this firm alongwith Vijay Kumar.

(28) In the said background it is now necessary to refer to Section VII of the Electricity Supply Instruction Manual. Clause 7.3(5) thereof reads thus:-

> ***"5. If there are no prospects of the recovery of the dues some other connection held by the defaulting consumer, the matter should be taken up at XEN's level who, should at his earliest convenience write to the defaulting consumer requesting early settlement of the account. If, however, it is found out that the consumer has left the station or does not have a connection at the local station but is getting supply from Nigam at some other station the concerned Executive Engineer should be asked to debit the charges to him against the connection held by him under his (XENs) charge. The XEN should whenever he makes a reference to the consumer, endorse a copy to the SDO for his information so that the SDO should not issue any further written reminders to the defaulter, but who at the same time should not slacken his efforts in effecting the recovery through bona fide representatives of the Nigam The amount should however be carried forward in the consumer's ledger from month to month and surcharge should continue to be levied maximum for a period of six months or upto the date of dismantlement of line whichever is earlier."***

(29) The reliance/emphasis of the petitioner on Sales Manual 2005 issued by the respondent distribution licensee that under Section 7 i.e. RECOVERY OF UNPAID DUES FROM DEFAULTING CONSUMERS, instruction 7.3 point 5 provides that *"The balance dues, if any, should be transferred to any other connection, which may be held in the name of the same consumer."* and since the connections were issued under two different names therefore liability could not have been attributed upon the petitioner is highly misplaced as rightly pointed and argued by counsel for respondent no. 2&3. The term "in the name of the same consumer" cannot be given such narrow interpretation so as to defeat the object and purpose of such instructions and has to be broadly construed and also on the other hand although the name of the companies were different but the application for release of electricity connection was made by the same applicant i.e. Vijay Gupta who was one of the owners in M/s Shree Shyam Cotspin Ltd. and director in the present petitioner company.

(30) The expression 'Consumer' has been sought to be equated to an entity by the petitioner and much emphasis has been laid on the expression "same consumer" as per the Electricity Supply Instruction Manual and difference of entity. There is no requirement to venture in to the said aspects of the case as the position in law is well settled that a Court of law can lift a corporate veil and disregard the separate legal personality of a corporate entity when such entity is being used as a facade to commit a fraud or an illegality. Even in circumstances where a charade of juristic entity is set up to avoid contractual or legal obligation.

Where the entity is just an alter ego of its directors, the separate juristic status can be ignored by a Court in furtherance of large public interest as well as law and order.

(31) The corporate structurization is not to act as an insulation against fraud or to shield evasion of legal or contractual liabilities. The concept revolves around preventing an abuse of a corporate firm, which may be ascertained and determined by the Court. Reference can be made to the judgment of the Hon'ble Supreme Court of India in the matter of **LIC Vs. Escorts Ltd. and others** reported as **(1986) 1 SCC 264**. The relevant extract thereof reads as under:-

> ***"90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr. Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in Wallersteiner v. Moir [(1974) 3 All ER 217] and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar [AIR 1965 SC 40 : (1964) 6 SCR***

885] , CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] and Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] - While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [1897 AC 22] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances Pennington in his Company Law (4th Edn.) states:

"Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is

referred to the many standard text hooks on corporation tax, income tax, capital gains tax and capital transfer tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members."

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [AIR 1965 SC 40 : (1964) 6 SCR 885] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967

SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

(32) It is no doubt true that every company incorporated under the Companies Act, 1956, is a legal personality distinct and different even from its own members. As pointed out by the Supreme Court in ***Juggilal v. ITO (AIR 1965 SC 932)***, every company is capable of

enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in certain exceptional cases, the Court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade. In ***Tata Engineering and Locomotive Co. Ltd*** **v.** ***State of Bihar*** **(AIR 1965 SC 40)**, a Constitution Bench of the Supreme Court pointed out that the doctrine that the company has a legal and separate entity of its own, has been subjected to certain exceptions by the application of the fiction that the veil of corporation can be lifted and its face examined in substance. The Court further pointed out that the doctrine of lifting of the veil marks a change in the attitude that law had originally adopted. This was a result of the impact of the complexity of economic factors. In a prophetic tone, the Supreme Court noted in that case, that in course of time, the exceptions to the rule of independent corporate entity, may grow in number, to meet the requirements of different economic problems. After pointing out 5 categories of cases indicated by Palmer on Company Law, where the doctrine of lifting of the veil could be applied, the Supreme Court held in that case that it would not be possible to evolve a rational, consistent and inflexible principle, which can be invoked in determining whether to lift the corporate veil or not. But the Court also broadly stated that (i) where fraud is intended to be prevented or (ii) where trading with an enemy is sought to be defeated, the veil could be lifted. In ***Secretary, Haryana State Electricity Board v. Suresh (1999 (3) SCC 601)***, the Supreme Court held that the doctrine of lifting of the corporate veil, as enunciated in *Saloman* case, has come to be recognised in corporate jurisprudence and that the law Court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit.

(33) Taking the law relating to the lifting of the corporate veil to greater heights, the Supreme Court pointed out in ***Sangramsinh P. Gaekwad v. Shanta Devi (2005 (11) SCC 314)*** that even principles of quasi partnership could be invoked, when the company in question is a family company. The Court also noted that the true character of the company and the business realities of the situation should not be confined to a narrow legalistic view and that the principles of quasi partnership are not foreign to the concept of the Companies Act. Again, in **Jai Narain Parasrampuria v. Pushpa Devi Saraf (2006 (7) SCC 756)**, the Supreme Court held that when the same individuals attempt to use the personality of the company for furthering their own personal object, the doctrine of lifting of the corporate veil is applicable. But there was one distinction in this Supreme Court case viz., that the Court found that there was a dishonest and fraudulent design.

(34) Therefore, it is clear that when the same set of persons are found to be operating under different corporate names in the form of different corporate entities, it is possible and sometimes even necessary to lift the corporate veil. Once it is found that there is a necessity to lift the corporate veil and once it is found after the lifting of the corporate veil that the same persons are behind all these entities, then there is no escape from the conclusion that the expression "*in the name of the same consumer*" appearing in under Section 7 i.e. RECOVERY OF UNPAID

DUES FROM DEFAULTING CONSUMERS, instruction 7.3 point 5 of the Distribution Code, would cover all those companies.

(35) In ***Amit Products (India) Ltd v. Chief Engineer*** reported as ***2005 (7) SCC 393***, the appellant before the Supreme Court was denied electricity connection on the ground that the arrears of electricity charges payable by a company which was the previous consumer, had to be cleared first. In the first round of litigation, the claim of the company which was the appellant before the Supreme Court, had been rejected on the ground that the defaulting company was its sister concern. A second round of litigation was started, after there was a change in the constitution of the shareholders and the directors. But the High Court rejected the claim, forcing the company to go on appeal to the Supreme Court. While dismissing the appeal, the Supreme Court held in para 7 of the report as follows: -

> ***"7. We have carefully considered the rival contentions of both the parties. We are unable to accept the contention of the appellant Company that by changing the members of the Board of Directors of the Company or by changing the shareholding pattern, the appellant Company had undergone any change. The very same company wanted the electricity connection without making any payment towards the electricity charges payable by the previous consumer and the matter was dealt with in detail by the High Court and it was held that the appellant Company is none other than the sister concern of M/s. Amar Amit Jalna Alloys Pvt.***

Ltd., and was representing the same consumer who had committed the default and it was held that condition 23(b) of the conditions of miscellaneous charges for supply of electricity energy would apply to the appellant Company. We do not think that by change of Directors or by change of pattern of shareholding, the appellant Company is really a different entity than M/s. **Amit Products (India) Ltd.,** ***who filed the previous Writ Petition No. 2090 of 2002. The reasons given in the previous judgment which were confirmed by this Court would apply with all force against the present appellant Company and the High Court has rightly dismissed the writ petition filed by the appellant Company."***

(36) The above decision of the Supreme Court (in Amit Products), steers clear all the suspicion that one may have about the issue on hand. The said case arose out of a rejection of the request for supply of electricity to one private limited company, on the ground that its sister company was in arrears of electricity. Apart from approving the rejection of the request for supply, the Supreme Court also confirmed it once again, even after a change in the constitution of the shareholders and the directors had taken place in the company which happened to be the intending consumer.

(37) Thus, I have no hesitation to held that the present petitioner company and the company whose dues are being transferred on it are being run and control by one family/person and therefore the decision of

the respondent distribution licensee in transferring the liability on the present petitioner electricity account number is valid.

(38) I am thus of the view that the institution of the present petition is a mischievous and dishonest act on the part of the petitioner to avoid payment of contractual liability. The petitioner tried to create a façade of corporate entity to avoid payment of an admitted liability. I am of the opinion that such dishonest attempt and tendencies need to be curbed and stern order needs to be passed.

(39) The present writ petition is accordingly **dismissed with a cost of Rs.5 lakh**. A sum of **Rs.1,00,000/-** out of the said amount be disbursed to respondent No.4 for harassment and forced litigation, while the balance **Rs.4,00,000/-** to be deposited with "Poor Patient Welfare Fund (PPWF) of Post Graduate Institute of Medical Education & Research, Chandigarh".

(40) All other pending misc. application if any shall also stand disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

15.10.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No