

- **Disadvantages of incorporation**

- Lifting of corporate veil- though for all purposes of law a company is regarded as a separate entity it is sometimes necessary to look at the persons behind the corporate veil.

a) Determination of character- The House of Lords in *Daimler Co Ltd. v. Continental Tyre and Rubber Co.*, held that a company though registered in England would assume an enemy character if the persons in de facto control of the company are residents of an enemy country.

b) For benefit of revenue- The separate existence of a company may be disregarded when the only purpose for which it appears to have been formed is the evasion of taxes. – *Sir Dinshaw Maneckjee, Re / Commissioner of Income Tax v. Meenakshi Mills Ltd.*

c) Fraud or improper conduct- In *Gilford Motor Co v. Horne*, a company was restrained from acting when its principal shareholder was bound by a restraint covenant and had incorporated a company only to escape the restraint.

d) Agency or Trust or Government company- The separate existence of a company may be ignored when it is being used as an agent or trustee. In *State of UP v. Renusagar Power Co*, it was held that a power generating unit created by a company for its exclusive supply was not regarded as a separate entity for the purpose of excise.

e) Under statutory provisions- The Act sometimes imposes personal liability on persons behind the veil in some instances like, where business is carried on

beyond six months after the knowledge that the membership of company has gone below statutory minimum (sec 45), when contract is made by mis describing the name of the company(sec 147), when business is carried on only to defraud creditors(sec 542).

Under New companies Act 2013--- Statutory provisions are:

1) for section 45 no new section is notified

2) for section 147 new section is 12 i.e. Registered office of company---sub section (8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

3) for section 542 ..new section is 339Liability for Fraudulent conduct of business- sub section

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct: Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection. Formality and expense- Incorporation is a very expensive affair. It requires a number of formalities to be complied with both as to the formation and administration of affairs.

3) Company not a citizen- In *State Trading Corporation of India v. CTO*, the SC held that a company though a legal person is not a citizen neither under the provisions of the Constitution nor under the Citizenship Act.