

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 275 of 2017

(Arising out of Order dated 13.07.2017 passed by the National Company Law Tribunal, Principal Bench, New Delhi in Company Petition No. 110(ND) of 2013)

IN THE MATTER OF:

Mcdonald's India Pvt. Ltd. & Ors.

....Appellants

Vs.

Vikram Bakshi & Ors.

....Respondents

Present:

Appellants: Mr. Arun Kathpalia, Sr. Advocate with Ms. Niti Dixit, Mr. Abhishek Tewari, Ms. Raunaq B. Mathur, Ms. Ishita Mathur, Advocates for A-1, 2 & 3.

Respondents: Mr. Tejas Karia, Mr. Gauhar Mirza, Mr. Prakhar Deep, Mr. Nishant Doshi, Advocates for R-1 and R-2.

Mr. Rohit Sharma, Advocate for HUDCO.

With

Company Appeal (AT) No. 280 of 2017

(Arising out of Order dated 13.07.2017 passed by the National Company Law Tribunal, Principal Bench, New Delhi in Company Petition No. 110(ND) of 2013)

IN THE MATTER OF:

Vikram Bakshi & Ors.

....Appellants

Vs.

Connaught Plaza Restaurants Pvt. Ltd. & Ors.

....Respondents

Cont'd.../

Present:

Appellants: Mr. Tejas Karia, Mr. Gauhar Mirza, Mr. Prakhar Deep, Mr. Nishant Doshi, Advocates for A-1 & 2.

Respondents: Mr. Arun Kathpalia, Sr. Advocate with Ms. Niti Dixit, Mr. Abhishek Tewari, Ms. Raunaq B. Mathur, Ms. Ishita Mathur, Advocates for R- 2, 3 & 4.
Mr. Rohit Sharma, Advocate for HUDCO.

With

I.A. No. 1540 of 2019 in
Company Appeal (AT) No. 275 & 280 of 2017

IN THE MATTER OF:

Mcdonald's India Pvt. Ltd., Vikram Bakshi & Bakshi Holdings Pvt. Ltd.

....Joint Applicants

Vs.

....Respondents

With

I.A. No. 1600 of 2019 in
Company Appeal (AT) No. 275 of 2017

IN THE MATTER OF:

Mcdonald's India Pvt. Ltd. & Ors.

....Appellants

Vs.

Vikram Bakshi & Ors.

....Respondents

Housing and Urban Development Corporation

....Applicant

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals Company Appeal (AT) No. 275 of 2017 and Company Appeal (AT) No. 280 of 2017 have been filed against the same judgment of National Company Law Tribunal, Principal Bench, New Delhi dated 13.07.2017 in Company Petition No. 110(ND) of 2013. Brief facts giving rise to these two appeals necessary for deciding the Appeals as well as the two I.As. No. 1540 of 2019 and 1600 of 2019 are as follows:

- (i) A Joint Venture Agreement was entered into inter alia by Connaught Plaza Restaurants Pvt. Ltd and Vikram Bakshi (Appellant No.1 and Respondent No.1 in Company Appeal (AT) No. 275 of 2017) on 31.03.1995 for setting up McDonald's Restaurants initially in the National Capital Region of Delhi and later in Northern India.
- (ii) Respondent No. 3 in Company Appeal (AT) No. 275 of 2017 – Connaught Plaza Restaurants Pvt. Ltd. was incorporated on 29.06.1995 with equity capital being 50% - 50% between Vikram Bakshi directly and indirectly through its holding company – Bakshi Holdings Pvt. Ltd. and McDonald's India Pvt. Ltd. McDonald's investment in the share capital was 92.95%.

- (iii) The Respondent – Vikram Bakshi was the Managing Director of the Company, whose term came to an end on July 17, 2013 by efflux of time. At the meeting of the Board held in on August 6, 2013, Vikram Bakshi was not reappointed as Managing Director.
- (iv) On August 16, 2013, the Appellant No.1 – McDonald's exercised its rights under the JV Agreement to purchase all the shares held by Respondent No.1 and 2 at a price to be arrived at using the contractually agreed mechanism.
- (v) On September 9, 2013, Vikram Bakshi and Bakshi Holdings Pvt. Ltd. (Respondent No. 1 and 2 in Company Appeal (AT) No. 275 of 2017) filed Company Petition No. 110(ND) of 2013 in the erstwhile Company Law Board seeking to specifically enforce some provisions of the Joint Venture Agreement and seeking reinstatement of Vikram Bakshi as Managing Director of the Company.
- (vi) The Company Petition came to finally decided by the National Company Law Tribunal, Principal Bench, New Delhi vide its judgment and order dated 13.07.2017. The proceeding of the meeting of the Board of Directors held on 06.08.2013 relating to re-election of Vikram Bakshi as Managing Director was set aside. The Board of Director of the Connaught Plaza was divided into 50-50. Hon'ble Mr. Justice G.S. Singhvi was appointed as Administrator with all powers. The McDonald's Corporation, Respondent No. 5 in the Company Petition was restrained from

interfering with the functioning of Connaught Plaza and all its restaurants.

(vii) Aggrieved by the order dated 13.07.2019, Company Appeal (AT) No. 275 of 2017 has been filed by the McDonald's India Pvt. Ltd. & Ors. Appellants - McDonald's India Pvt. Ltd. & Ors. prayed for setting aside of order dated 13.07.2017.

(viii) Company Appeal (AT) No. 280 of 2017 has been filed by Vikram Bakshi and Bakshi Holdings Pvt. Ltd. challenging the order dated 13.07.2017 seeking modification of the judgment dated 13.07.2017 to the limited extent for directing the buyout of shares of the Company either by Appellant or by the Respondent at the fair market value.

2. On 25.08.2017, when Company Appeal (AT) No. 275 of 2017 was taken up by this Tribunal, this Court passed the order allowing the parties to obtain instruction whether there is a chance of amicable settlement on certain terms and conditions and the Appeal was adjourned. On 06.05.2019, this Tribunal noticed the contention of the parties that they are negotiating for settlement. This Tribunal observed that the parties to reach settlement uninfluenced by any of the order passed by the Tribunal or the Appellate Tribunal. A joint application I.A. No. 1540 of 2019 has been filed by the parties in Company Appeal (AT) No. 275 of 2017 and Company Appeal (AT) No. 280 of 2017, where it was stated that the parties to put a quietus to their inter se disputes, through a process of

negotiations, settlement has been entered into by the parties. It was further stated that the Learned Administrator has accorded his no-objection to the filing of I.A. No. 1540 of 2019. In Para 6 of the application following has been stated:

*“6. It is contemplated by and between the Parties that, on or around May 9, 2019, upon fulfillment of the Conditions Precedent and the performance of the closing obligations of the Parties (the “**Closing**”): (a) a meeting of the board of directors of CPRL will be held to adopt certain mutually agreed resolutions and consequently the presence of the Ld. Administrator will not be required at such proposed board meeting (the “**proposed Board Meeting**”); (b) Mr. Vikram Bakshi will resign as the managing director of CPRL and such resignation will be accepted at the proposed Board meeting; and (c) CPRL will record the transfer of the entire shareholding of Mr. Vikram Bakshi and Bakshi Holdings Private Limited in CPRL to MIPL (or its designated entity)”*

3. In the application following prayers have been made:

- “a) Take on record the instant application and list the instant Appeals at the earliest convenient date after May 9, 2019;*
- b) Take on record the no-objection of the Ld. Administrator as regards the proposed*

Settlement and clarify that the Impugned Judgment will not preclude, restrict or otherwise come in the way and/or interfere with the proposed Settlement;

- c) *Upon the due filing of the Post-Closing Affidavit by MIPL on or after May 9, 2019:*
 - i. *direct that the Impugned Judgment and the directions at paragraph 41 thereof stand set aside and the Learned Administrator appointed pursuant to the Impugned Judgment stands discharged;*
 - ii. *dispose of Company Appeal (AT) No.275 of 2017 and Company Appeal (AT) No.280 of 2017 and all proceedings relating to the Impugned Judgment in the above terms without any order as to costs; and*
- d) *In the event of a failure of the proposed Settlement, and in the alternative to Prayer (c) above, dispose of the instant appeals on merits;*
- e) *Pass any other or further orders that this Hon'ble Appellate Tribunal may be pleased to grant in the interest of justice."*

4. On 13.05.2019, this Tribunal allowed the parties to file affidavit relating to settlement and matter was directed to be fixed on 15.05.2019. An I.A. No. 1599 of 2019 was filed by Housing and Urban Development

Corporation Ltd. (hereinafter referred to as 'HUDCO') on 13.05.2019 seeking intervention in the Appeals. This Tribunal on 15.05.2019, allowed the intervention of HUDCO.

5. HUDCO also filed an I.A. No. 1600 of 2019 pleading that the Vikram Bakshi as Promoter and full time Director of Ascot Hotels and Resorts Pvt. Ltd. had obtained a Term Loan of Rs.80 Crores for financing of a commercial project at Plot No.B-29, Sector-62, Noida, Distt. G. B. Nagar (U.P.). Loan Agreement was entered on 05.09.2006. Out of Rs.80 Crores, an amount of Rs.62.3828 Crores was released. Ascot Hotels and Resorts Pvt. Ltd. has mortgaged lease-hold rights of project property in favour of HUDCO, some immovable property located in Faridabad. Vikram Bakshi and his wife Madhurima Bakshi executed personal guarantees dated 06.09.2006. Loan account was declared NPA on 31.08.2011 and OA No. 224 of 2013 dated 01.08.2013 was filed before the Debts Recovery Tribunal-II Delhi under Section 19 for recovery of Rs.73,78,82,759/- alongwith pendent lite and future interest. During the pendency of OA No.224 of 2013, HUDCO has preferred an application before the DRT in respect of attachment of 3100 shares which were in the name of Vikram Bakshi in his company Connaught Plaza Restaurants Pvt. Ltd. Vikram Bakshi had given his affidavit and undertaking that the shares held by him in Connaught Plaza Restaurants Pvt. Ltd shall not be alienated or transferred. OA No.224 of 2013 was decided by judgment dated 12.08.2015. Recovery Certificate No. 330/2015 dated 12.08.2015 was

issued in favour of HUDCO. Execution proceedings were initiated on the basis of Recovery Certificate. An I.A. No. 1010 of 2016 dated 01.02.2016 was filed by the HUDCO praying for attachment of 3100 shares (Rs.1000/- each share) of M/s Connaught Plaza Restaurants Pvt. Ltd in the name of Vikram Bakshi. The order dated 02.02.2016 was passed where Vikram Bakshi was restrained from alienating or transferring or creating any third party interest in the aforesaid 3100 shares of M/s Connaught Plaza Restaurants Pvt. Ltd. or any other quantity in the name of Vikram Bakshi till further orders. An appeal was filed by HUDCO against the order dated 12.08.2015, in which Appellant prayed that Recovery Certification be modified by the rate of interest. Recovery Certificate was amended as per the Appellate Order. The HUDCO issued an e-auction sale notice for sale of mortgaged property but no bidder came forward in the e-auction. HUDCO came to know on 07.05.2019 that Vikram Bakshi and McDonald's are negotiating to enter into settlement, hence, applications were filed on 09.05.2019 before the Debts Recovery Tribunal-II, Delhi, where order was passed on 09.05.2019. On the strength of aforesaid pleadings, following prayers have been made in I.A. No. 1600 of 2019:

- “a) Direct the parties to this Appeal to furnish to the Applicant complete particulars and documents relating to the settlement, if any, arrived at between them; AND*
- b) Director the Appellants and / or the Respondents to deposit the entire proceeds of settlement before the Ld. DRT-II, Delhi in*

RC No. 330/2015 for discharge of the liability towards the applicant; AND

c) Such other order(s) as this Hon'ble Tribunal may deem fit and necessary in the interest of justice."

6. On 18.09.2019, noticing the submissions of learned counsel for the HUDCO, this Tribunal directed that parties should not implement the agreement. The Appeals alongwith I.A. No. 1540 of 2019 and I.A. No. 1600 of 2019 were heard by this Tribunal on 16.11.2022 and orders were reserved.

7. Learned counsel appearing for the McDonald's India Pvt. Ltd. contends that both the parties in the dispute i.e. McDonald's India Pvt. Ltd. and Vikram Bakshi having entered into settlement to end their inter se dispute and they having jointly praying to set aside the impugned order passed by National Company Law Tribunal, Principal Bench, New Delhi dated 13.07.2017, there is no basis for HUDCO to oppose the application I.A. No. 1540 of 2019 jointly filed by the parties, HUDCO being stranger to inter se dispute between McDonald's India Pvt. Ltd. and Vikram Bakshi. It is submitted that HUDCO's claim against Vikram Bakshi as Guarantor and Promoter of Ascot Hotels and Resorts Pvt. Ltd. is a separate issue which can very well be pursued by the HUDCO for dues against Vikram Bakshi but that cannot be a ground to oppose the Joint Application I.A. No. 1540 of 2019 filed by both the parties to the dispute.

8. Learned counsel appearing for Vikram Bakshi submits that order of Debts Recovery Tribunal in the OA filed by the HUDCO for recovery of dues on 02.02.2016 where direction was issued not to alienate or transfer or create any third party interest in the 3100 shares held by Vikram Bakshi in the Company - M/s Connaught Plaza Restaurants Pvt. Ltd. and by subsequent order dated 09.05.2019 proceeds have been directed to be deposited. Vikram Bakshi has already deposited the amount of Rs.10 Crores on 28.05.2019 towards share consideration for the transfer of 3100 shares in M/s Connaught Plaza Restaurants Pvt. Ltd., which amount has already been withdrawn by the HUDCO. It is submitted by learned counsel for Vikram Bakshi that Ascot Hotels and Resorts Pvt. Ltd. have forwarded One Time Settlement proposal to the HUDCO offering to pay one time full and final settlement of Rs.57.32 Crores. Subsequently, the Ascot Hotels and Resorts Pvt. Ltd. has increased his OTS to Rs.70 Crores, it however was not accepted by the HUDCO. The Ascot Hotels and Resorts Pvt. Ltd. has subsequently filed a Writ Petition in Delhi High Court being WP (C) No. 12089 of 2019 against the inaction of HUDCO in not accepting the OTS proposal of Ascot Hotels and Resorts Pvt. Ltd. Hon'ble High Court issued notice on 23.01.2020 and recorded the handing over of demand draft of Rs.56.36 Crores from Ascot Hotels and Resorts Pvt. Ltd. to HUDCO since the pay order of rs.3.64 Crores was already encashed amounting to total payment of Rs.60 crores towards the OTS scheme. The Writ Petition is pending before the Delhi High Court. It is submitted by learned counsel for Vikram Bakshi that total share value of 3100 shares, which were

attached and restricted to be transferred, has already been deposited before the DRT of which Rs.10 Crores has been withdrawn by the HUDCO, therefore, there is no question of violation of order passed by the DRT-II. Further proceeding of OTS in which Rs.60 Crores has already been transferred/ handed over to HUDCO, is pending consideration before Delhi High Court. HUDCO has no jurisdiction to oppose the settlement between McDonald's India Pvt. Ltd. and Vikram Bakshi, it having already taking steps for recovery of its dues as pertaining to Ascot Hotels and Resorts Pvt. Ltd., which is a third entity having no concern with issues between McDonald's India Pvt. Ltd. and Vikram Bakshi.

9. Learned counsel appearing for HUDCO opposing the submissions of learned counsel for McDonald's India Pvt. Ltd. and Vikram Bakshi submits that settlement arrived between the parties is contrary to orders passed by the Debts Recovery Tribunal in favour of HUDCO dated 02.02.2016 and 09.05.2019. 50 per cent shareholding of Connaught Plaza Restaurants Pvt. Ltd. which has been transferred under settlement was owned by Vikram Bakshi to the extent of 3100 shares by Mr. Vikram Bakshi and 1,42,500 shares by Bakshi Holdings Pvt. Ltd. Three shareholders of the Bakshi Holdings Pvt. Ltd. are Mr. Vikram Bakshi, his wife Mrs. Madhurima Bakshi and M/s Vikram Bkshi and Company Pvt. Ltd. It is submitted that present is a fit case where corporate veil be lifted. The order dated 02.02.2016 passed by Debts Recovery Tribunal governs not only 3100 shares held by Vikram Bakshi in Connaught Plaza Restaurants Pvt. but it should also

govern 1,42,500 shares held by Bakshi Holdings Pvt. Ltd. Learned counsel for the HUDCO has relied on judgment of Hon'ble Supreme Court in "*State of Rajasthan vs. Gotan Lime Stone Khanij Udyog Pvt. Ltd., (2016) 4 SCC 469*" in support of his submission that corporate veil deserved to be lifted. It is submitted that the settlement between the parties is contrary to the orders dated 02.02.2016 and 09.05.2019 passed by the DRT. It is further submitted that the proceedings before the Delhi High Court with regard to OTS is being contested by the HUDCO. Learned counsel for the HUDCO submits that the proceeds of present settlement are essential for the recovery of HUDCO dues, hence, I.A. No. 1540 of 2019 deserves to be dismissed.

10. We have considered the submissions of learned counsel for the parties and perused the record.

11. Both the Company Appeals (AT) Nos. 275 of 2017 and 280 of 2017 have been filed by the parties to the Company Petition No. 110(ND) of 2013 passed by the National Company Law Tribunal, Principal Bench, New Delhi. The Company Petition was filed by Vikram Bakshi and M/s. Bakshi Holdings Pvt. Ltd. under Sections 397, 399, 402, 403 and 406 of the Companies Act, 1956. The subject matter of the dispute was Joint Venture Agreement between the parties entered on 31.03.1995. The dispute between the parties arose consequent to meeting of Board held on 06.08.2013 when resolution was taken no to re-appoint Vikram Bakshi as Managing Director of Connaught Plaza Restaurants Pvt. Ltd. Company

Petition was filed thereafter by Vikram Bakshi and Anr. which has been allowed by order dated 13.07.2017, as noticed above.

12. Both McDonald's India Pvt. Ltd. and Vikram Bakshi and others parties to Company Petition 110(ND) of 2013 and parties to these two Appeals i.e. Company Appeals (AT) No. 275 of 2017 and 280 of 2017 have filed a joint application I.A. No. 1540 of 2019 praying for setting aside the impugned order and disposing of the Company Petition in terms as mentioned in the I.A. No. 1540 of 2019. The application I.A. No. 1540 of 2019 is being opposed by HUDCO which has filed I.A. No. 1600 of 2019. The question which need to be considered in these Appeals is as to whether HUDCO has made sufficient ground to reject I.A. No. 1540 of 2019. We need to recapitulate the case of HUDCO as has been delineated in I.A. No.1600 of 2019.

13. HUDCO has sanctioned a loan of Rs.80 Crores to a Company – M/s Ascot Hotels and Resorts Pvt. Ltd. Vikram Bakshi was Promoter and full time Director of Ascot Hotels and Resorts Pvt. Ltd. Vikram Bakshi was Personal Guarantor to guarantying the repayment of the loan. Due to default committed by Ascot Hotels and Resorts Pvt. Ltd., account was declared NPA. OA No. 224 of 2013 was filed which was decided by DRT on 12.08.2015 holding that HUDCO is entitled to recover sum of Rs.68,62,91,032/- with interest until payment. Recovery Certificate No. 330/2015 was issued by the DRT. HUDCO put the Recovery Certificate in execution, in which Execution Proceeding I.A. No. 1010/2016 was filed by

HUDCO. In the I.A. which was filed by the HUDCO in RC No. 330 of 2015 following prayers have been made:

“PRAYER

It is therefore respectfully prayed that, this Hon’ble Tribunal most graciously be pleased to

a) Attach the following current/savings Accounts of CD NO.1,3,4

*i. M/s Ascot Hotels & Resorts Ltd.
Current A/c No.13198
Karnataka Bank Ltd.,
Main Cannaught Place, New Delhi.*

*ii. Shri Vikram Bakshi
Savings A/c No.6246
Karnataka Bank Ltd.,
Regal Building, Cannaught Place,
New Delhi.*

*iii. Mrs. Madhurima Bakshi
Savings A/c NO. 8323207899
ABN Amro Bank
15, Barakhamba Road, New Delhi.*

b) Attach the 3100 shares (Rs.1,000.00 each share) of M/s. Cannaught Plaza Restaurants Pvt. Ltd. in the name of CD No.3.

AND such other order (s), which this Hon’ble Tribunal deems fit & proper in the facts & circumstances of the case, may also be passed in favour of the CD No.4.”

14. On the said application order was passed on 02.02.2016 by the Recovery Officer. The operating direction dated 02.02.2016 is as follows:

“In the meantime, CDs# 1, 3 and 4 are restrained from transferring the funds from and/or operating the current/savings accounts till further orders. CD#3 is also restrained from alienating or transferring or creating any third party interest in the aforesaid 3100 shares (Rs.1000/- each share) of M/s Cannaught Plaza Restaurants Pvt. Ltd. or any other quantity in the name of CD#3 till further orders.

Let a copy of this order be given dasti to the CH Bank for compliance.

To be listed on 11.02.2016, as scheduled.”

15. An affidavit has been filed on the record that subsequent to order dated 02.02.2016 another order was passed on 09.05.2019 by the Recovery Officer by which following directions have been issued:

“Direction

- 1. Let Rule 83 Notice be issued to M/s McDonald’s India Pvt. Ltd. at 202-206 Tolstoy H No. 15 Tolstoy Marg, New Delhi-110001 through its managing director/ authorized signatory and M/s Connaught Plaza Restaurant Pvt. Ltd. having its officer at 15th Floor Mohan Dev, 13 Tolstoy Marg, New Delhi-110001 to deposit the proceeds of settlement with CD#3, with this Forum towards satisfaction of this RC.*
- 2. CD#3 is directed to deposit the proceeds of settlement with McDonald’s India Pvt. Ltd.*

with this Forum towards satisfaction of this RC under RDDB Act.

3. *CHFI is directed to supply the copy of this order and the application filed vide diary no.6562 dated 09.05.2019 to the CD#3 & 4 and CD#3 & 4 are directed to file their response on the same with an advance copy of the same to the CHFI on or before the next date of hearing.*
4. *CD#3 is once again directed to not to transfer the attached shares vide order dated 02.02.2016 by this Forum and also file the details of the rate of the shares of CD#3 as on date.*

Let a copy of this order be given dasti to CHFI for compliance.

*Let this matter be listed on **13.05.2019 as already listed.***

16. There is material on the record that insofar as 3100 shares held by Vikram Bakshi in Connaught Plaza Restaurants Pvt. Ltd, the amount corresponding to the share value has already been deposited before the DRT, an amount of Rs.10 Crores which has been withdrawn.

17. The contention which has been much pressed by learned counsel for the HUDCO is that the deposit of amount towards 3100 shares is not sufficient compliance of the order of the Recovery Officer. It is submitted that 50% shareholding in Connaught Plaza Restaurants Pvt. Ltd consisted of 1.06% shareholding by Vikram Bakshi (3100 shares) and 48.94% shareholding of M/s Bakshi Holdings Pvt. Ltd. (1,42,500 shares). Bakshi

Holdings Pvt. Ltd. is a separate company with regard to which no order was issued by Recovery Officer. Direction was issued to the Vikram Bakshi by the Recovery Officer with regard to 3100 shares especially and sale proceeds of which shares has already been deposited before the Recovery Officer.

18. Learned counsel for the HUDCO at this juncture has submitted that corporate veil of the Bakshi Holdings Pvt. Ltd. need to be lifted and shares held by Bakshi Holdings Pvt. Ltd. also held to be covered by the direction issued by Recovery Officer. Learned counsel for HUDCO has relied on the judgment of Hon'ble Supreme Court in "*State of Rajasthan vs. Gotan Lime Stone Khanij Udyog Pvt. Ltd., (2016) 4 SCC 469*" Para 24 to 27, which is to the following effect:

*"24. In State of U.P. vs. Renusagar Power Co.10
this Court observed:*

"66. It is high time to reiterate that in the expanding 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....."

67. 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.

68. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case (1897 AC 22) 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 Lectures, P. 183)."

25. In *Delhi Development Authority versus Skipper Construction Company (P) Ltd.*¹¹, it was observed:

"24. Lifting the corporate veil : In *Aron Salomon v. Salomon & Company Limited* (1897) AC 22, the House of Lords had observed, "the company is at law a different person altogether from the subscriber...; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands received 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 MLR 338]. Indeed, as far back 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) 12 CLR 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 and veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down ? The nearest approximation to generalization 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, upand-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 it necessary to refer."

(underlining is ours)

26. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions – the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.

27. In Victorian Granites (supra), it was observed:-

"4. It is true that a facade of compliance of law has been done by P. Rama Rao and Magam Inc. for having the transfer of the leasehold interests had by P. Rama Rao made in favour of the latter. The best of the legal brains will be available to escape the clutches of law and transactions would be so shown to be in compliance of semblance

of law. In that pursuit, payment of royalty and permits remained in the name of P. Rama Rao. The court has to pierce through the process, lift the veil and reach the genesis and effect. Article 39(b) of the Constitution envisages that the State shall, in particular, direct its policies towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Socio-economic justice is the arch of the Constitution. The public resources are distributed to achieve that objective since liberty and meaningful right of life are hedged with availability of opportunities and resources to augment economic empowerment. The question is whether the transfer is to subserve the above common good and constitutional objective? It is true that when the individuals have been granted lease of mining of the property belonging to the Government, the object of such transfer was to augment the economic empowerment of the transferee by himself or by a cooperative society or partnership composing persons to work out the mines to achieve economic empowerment. Whether such a transfer could be made a subterfuge to circumvent the constitutional philosophy and thereby the constitutional objective be sabotaged in that behalf? Answer would be obviously in the negative.....”

19. There can be no dispute to the proposition of law laid down by the Hon'ble Supreme Court regarding principle of lifting of corporate veil. The lifting of veil can be invoked when the corporate entity is in attempt to evade legal obligation or there is necessity to unravel tax evasion. The HUDCO on the strength of Recovery Certificate granted by the Recovery Officer is already taking steps for recovery against the entity.

20. We have noticed that on the application which was filed by the HUDCO on which order was passed on 02.02.2016 was only with regard to 3100 shares held by Vikram Bakshi in M/s Connaught Plaza Restaurants Pvt. Ltd. Learned counsel for the HUDCO has emphasized on the expression "*or any other quantity in the name of CD#3 till further orders*" as occurring in the order dated 02.02.2016. The expression "*or any other quantity in the name of CD#3*", CD#3 being Vikram Bakshi obviously referred to the shares in the name of Vikram Bakshi in M/s Connaught Plaza Restaurants Pvt. Ltd apart from aforesaid 3100 shares. It is not the case of either of the parties that any more shares apart from 3100 shares are owned by Vikram Bakshi in M/s Connaught Plaza Restaurants Pvt. Ltd. Hence, the order dated 02.02.2016 issued by the Recovery Officer has to be held to be confined to 3100 shares. On the strength of said order, the Counsel for the HUDCO is not right in his submission that corporate veil of other company in which Vikram Bakshi is also shareholder should also be lifted i.e. Bakshi Holdings Pvt. Ltd. Present is not a case where there is any occasion for lifting corporate veil of other companies which has nothing to do with recovery of Ascot Hotels and Resorts Pvt. Ltd.. HUDCO is fully entitled to recover its dues which are owed by Ascot Hotels and Resorts Pvt. Ltd. On the strength of Recovery Certificate granted by Debts Recovery Tribunal being Recovery Certificate No. 330/2015, Recovery Officer in fact is proceedings to effect recovery and certain amount has already been deposited before the Recovery Officer including the value of 3100 shares of Vikram Bakshi, which were under restraint in the Recovery Officer's order.

The fact that HUDCO is entitled to pursue its Recovery Certificate No.330/2015 cannot be a ground to reject I.A. No. 1540 of 2019 which has been filed by both the parties of the Company Petition No. 110(ND) of 2013, order passed in which Company Petition is under challenge in these Appeals i.e. Company Appeal (AT) No. 275 of 2017 and Company Appeal (AT) No. 280 of 2017.

21. We, thus, are satisfied that no grounds have been made in I.A. No. 1600 of 2019 to reject I.A. No. 1540 of 2019 filed by the McDonald's India Pvt. Ltd. & Ors. and Vikram Bakshi & Ors. In result, I.A. No. 1540 of 2019 is allowed. The impugned order dated 13.07.2017 is set aside. Company Appeal (AT) No. 275 of 2017 and Company Appeal (AT) No. 280 of 2017 are disposed of in terms of the prayers made in the I.A. No. 1540 of 2019. I.A. No. 1600 of 2019 is rejected.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

NEW DELHI

13th December, 2022

Archana

Company Appeal (AT) No. 275 of 2017, 280 of 2017, I.A. No. 1540 of 2019 & I.A. No. 1600 of 2019