

Execution - Lifting of the Corporate Veil - In what circumstances and in which proceedings is the corporate veil to be lifted - Whether it can be lifted in execution proceedings also or it has to be lifted in the substantial proceedings, of orders/decrees wherein execution is sought - It cannot be laid down as a general proposition that whenever the decree is against a company, its Directors/shareholders would also be liable - To hold so would be contrary to the very concept of limited liability and obliterate the distinction between a partnership and a company. [Para 10]

Punjab Law Reporter - Supreme Court Online

Held,

As aforesaid not only were the Directors not parties to the arbitration proceedings but were not impleaded in the execution petition also. There are no averments whatsoever in the execution petition or even in the application under consideration of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law and in which situations the Supreme Court in **Singer India Ltd. v. Chander Mohan Chadha** (2004) 7 SCC 1, has held that the corporate veil can be disregarded. All that the decree holder has pleaded is that one of the Directors has paid part of the decretal amount. Such voluntary payment by one of the Directors cannot entitle the decree holder to execute the decree against the other Directors also. The only other averments are that the income generated from the company was the income of the Directors. However there are no specific pleadings of fraud and as required to be made under Order 6 Rule 4 of the [CPC](#). It is significant that the three Directors are not stated to be related to each other but are only described as friends of each other. Such faith amongst the Directors is implicit for them to come together to incorporate a company. However, the said circumstance alone is not sufficient to make out a case for lifting of the corporate veil. It has been vaguely stated that the claims of the decree holder are pending since 1996 and the assets of the company have been done away with. There are no averments whatsoever as to what were the assets of the company and as to when they were transferred. In **Saurabh Exports v. Blaze Finlease & Credits Pvt. Ltd. 129 (2006) DLT 429**, on the pleadings and evidence recorded, the court had found that the company was only a front for the business of its Directors and it was on such evidence that the decree was passed not only against the company but against the Directors also. In the present case no efforts whatsoever have been made out by the decree holder to even plead that the assets of the Directors against whom the decree is sought to be executed were not in existence prior to the incorporation of the company or that the business through the company was only a front for the business of the said Directors.

In **Ashish Polyfibres (Bihar) Ltd. v. State Bank of India 2009 (107) DRJ 1 (DB)**; in a suit by a bank for recovery of dues, decree had been passed not only against the company but also against its Directors. The said decree was under challenge before the Division Bench on the ground of the Directors being not liable. The Division Bench dismissed the appeal for the reason that in that case the money had been mistakenly credited by the bank in the account in the name of the company and it was found that the Directors of the

company in spite of knowledge of such mistake misappropriated the amounts. It was in those circumstance that they were held liable and not merely for the reason of being the Directors. Moreover that was a substantive proceeding and not an execution proceeding.

M.R. Khanna v. Union of India 133 (2006) DLT 114, was a case of recovery of dues under the Employees' State Insurance Act, 1948. The corporate veil was pierced in that case because the ESI's contributions recovered from the salaries of the poor workers had not been deposited but had been misappropriated by the Directors for their own benefit. That was also not a case of execution of a decree but of steps taken under the Employees' State Insurance Act, 1948.

The observations relied upon in **Iyer & Son Pvt. Ltd. v. LIC 2007 X AD**, were also made in the context of public dues. No public dues are involved in the present case; that was also not the case of a money decree.

Saurabh Exports v. Blaze Finlease & Credits Pvt. Ltd. 129 (2006) DLT 429, was a suit for recovery of money against the company and its Directors and not a case of execution.

[2010 PLRonline 0004 \(Del.\)](#)