
COMPANY LAW

Corporate Personality

It's Nature:-

Corporate personality is a creation of law. Legal personality of corporation is recognized both in English and Indian Law. A corporation is an artificial person enjoying in law capacity to have rights and duties and holding property. A corporation is distinguished by reference to different kinds of things which the law selects for personification. The individuals forming the corpus of the corporation are called its members.

Juristic personality of corporations pre-supposes the existence of three conditions.

- 1) Firstly, there must be a group or body of human beings associated for a certain purpose.
- 2) Secondly, there must be organs through which the corporation functions, and
- 3) Thirdly, the corporation is attributed will (animus) by legal fiction.

NOTE:-It is significant to note that a corporation is distinct from its individual members. It has the legal personality of its own and it can sue and be sued in its own name. It does not come to an end with the death of its individual members and, therefore, has a perpetual existence. However, unlike natural persons, a corporation can act only through its agents. Law provides special procedure for the winding up of a corporate body.

In certain cases, the corpus of the legal person is some fund or estate which is reserved for certain special uses. *For example*, a trust-estate or the estate of an insolvent, a charitable fund etc., are included within the term 'legal personality'. However, English law requires that these estates or funds, to be recognized as legal persons, must be duly incorporated under the existing law. The law does not believe in personification of these estates or funds, instead, it personifies those corporate bodies which administer the estate or fund.

KINDS OF CORPORATIONS

Corporations are of two kinds, namely, (1) Corporation Aggregate, and (2) Corporation Sole.

Corporation Aggregate

A corporation aggregate is an association of human beings united for the purpose of forwarding their certain interests, Limited companies are the best example of a corporation aggregate. Such a company is formed by a number of persons who as shareholders of the company contribute or promise to contribute to the capital of the company for furtherance of a common object. Their liability is limited to the extent of their share-holding in the company. A limited company is thus formed by the personification of the shareholders. The property of the company is not that of the shareholders but its own property and its assets and liabilities are different from that of its members. The share-holders have a right to receive dividends from the profits of the company but not the property of the company.

For certain purposes, company has an independent existence from those of its members. It is for this reason that the company may become insolvent but its members may still be rich and wealthy. Conversely, the insolvency of the members does not adversely affect the company and it may continue to have a flourishing business. The death of members does not finish the existence of the company. Gower cites a unique example of this and writes that in the General Meeting of a company all the members died due to a bomb-explosion but it did not affect the existence of the company and it continued functioning as before.

The facts of the case were that one Saloman was carrying the business of boot and shoe manufacturing. He incorporated a company named “**Saloman & Co. Ltd.**” with seven subscribers consisting of himself, his wife, four sons and one daughter. The company took over the personal business assets of Saloman for £38,782 and in turn, Saloman took 20,000 share of £ 1 each, debentures worth £10,000 of the company with charge on the company’s assets and the balance in cash. His wife, four sons and a daughter took £1 share each. Subsequently company went into liquidation due to general trade depression. There were various unsecured creditors, who contended that Saloman could not be treated as a secured creditor of the company in respect of the debenture held by him, as he was the managing director of one-man company, which was not different from Saloman and the cloak of the company was a mere sham and fraud.

Lord Mac Naughten observed:

“When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate exercising all the functions of an incorporated Company. The Company is at law a different person altogether from subscribers to the memorandum, 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 receive the profits; the company is not in law the agent of the subscribers or trustees of them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Companies Act.”

Corporation Sole

Corporation sole is an incorporated series of successive persons. It consists of a single person who is personified and regarded by law as a legal person. In other words, a single person, who in exercise of some office or function, deals in the legal capacity and has rights and duties. A corporation sole is perpetual. The examples of corporation sole are Post-Master-General, Public Trustee, Comptroller & Auditor-General of India, the President of India, The Crown in England etc.

A Corporation sole is distinguishable from “a mere succession of officers or persons exercising the same rights.” As Gray rightly pointed out, “If a corporation sole exists, an occupant of an office can generally acquire property for the benefit of his successors as well as himself, he can generally recover for injury inflicted on property pertaining to the office while such property was in the hands of his predecessor and he can sometimes enter into a contract which will bind and endure to the advantage of his successors.”

Generally, corporation sole are the holders of a public office which are recognized by law as corporation. The chief characteristic of a corporation sole is its “continuous entity endowed with a capacity for endless duration”.

A corporation sole is an illustration of double capacity. For instance, the King of England exercises the function of the Crown and in his capacity as the constitutional head, he can confer rights and duties upon himself as an individual. The natural person may thus owe a duty to himself as a legal person. Same is the position of the President of India. As regards the British Crown, it is generally said, “The king is dead, long live the king.” This proverb indicates the double capacity of the Crown as a corporation sole, the first part refers to the Crown as a natural person i.e., individual, while the latter

part expresses his position as a legal personality. In simple words, it means that even after the death of the kind, his legal capacity as a Crown remains in existence as a corporation sole.

The object of corporation sole is similar to that of corporation aggregate. In it a single person holding a public office holds the office in a series of succession, meaning thereby that with his death, his property, right and liabilities etc., do not extinguish but they are vested in the person who succeeds him. Thus on the death of a corporation sole, his natural personality is destroyed but legal personality continues to be represented by the successive person. In consequence, the death of a corporation sole does not adversely affect the interests of the public in general.

Position of Corporate personality in India

The concept of corporate personality is well recognized in India. The position of Karta in a hindu coparcenary is an illustration on the point. In the coparcenary system all members of the family have some right and duty, but the karta is the head of the family who manages the entire family property. He has right to alienate the family property and all the family members are under his control. He can be sue or be sued on behalf of the join family. In juristic terms he is a corporation Sole Having Double Capacity i.e. - As a natural person he is the eldest of the family and as a legal person he is the karta of the family. The reserve bank of India has a corporate existence because it is an incorporated body having an independent existence. But Union Public comm. and Hindu Family both of them are recognized as a legal person because both these cannot hold properties in their own name.

Advantages of Corporate Personality

- (1) Incorporation greatly simplifies legal procedure, enabling persons to sue a single incorporated body rather than numerous individuals. The corporation, on its part, can also sue as a single legal entity.
- (2) The death or withdrawal of a member or members does not disturb the existence of an incorporated body. The members may come and go but the corporation continues perpetually forever.
- (3) The financial liability of shareholders is limited only to the extent of their share-holding and not beyond it.
- (4) An incorporated body being a legal entity, can freely dispose of its property in its own name. Its property is clearly distinguishable from that of the shareholder's property.
- (5) Incorporation helps the growth of commerce and industries. Even small investors have an opportunity to invest their income in the capital of the corporate body. In this way incorporation enables the petty investors to contribute to the development of national economy.

Disadvantages of incorporation

There are, certain disadvantages an inconveniences with incorporated bodies, some of these disadvantages are-

- (1) Incorporation of a company involves a number of legal formalities and the consequent expenses that go with it. The affairs and working of a company have to be conducted strictly in accordance with the applicable legal provisions, non-compliance of which entails penal consequence. Various returns