

Theory of Corporate Personality

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Abstract: *In this research paper the authors have gone through various books and internet sources to present all the theories of corporate personality in one concentrated form. In this research paper the authors have find out that “the word ‘Company’ has no technical or legal meaning. Section 2 (20) of the 2013 Act defines the term “company” to mean “a company incorporated under the Companies Act 2013 or any previous company law”. In the common law a company is a ‘Legal Person’ or ‘Legal Entity’ which is separate from and capable of surviving beyond the lives of members. Just like a juristic person a company is an entity different from its members, having its rights and duties and having a perpetual succession. So, Corporate Personality is one of the characteristic of the company under which company is said to be a legal or artificial person. Also the Authors have discussed in detail the “characteristics of the corporate personality”. Further the authors have analysed in detail the “five theories of corporate personality namely, Fiction, Concession, Realist, Group Personality Theory and Symbolist Theory”.*

Keywords: corporate personality

1. Introduction

The word ‘Company’ has no technical or legal meaning. Section 2 (20) of the 2013 Act defines the term “company” to mean “a company incorporated under the Companies Act 2013 or any previous company law [1]. In the common law a company is a ‘Legal Person’ or ‘Legal Entity’ which is separate from and capable of surviving beyond the lives of members. Just like a juristic person a company is an entity different from its members, having its rights and duties and having a perpetual succession. So, Corporate Personality is one of the characteristic of the company under which company is said to be a legal or artificial person. The concept of corporate personality further says that a company is having a separate legal entity which is different from its members. The concept of Corporate Personality was ruled out in the famous case of Solomon v. Solomon whereby it was enunciated that a company is having a separate legal entity as distinct from its members [2].

2. Characteristics of Corporate Personality

1. Separate Legal Entity

A company has a distinct legal entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members. So, the company is not liable for the individual debts of its members in any way. The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders.

This means that company is a having independent existence and is vested with a corporate personality which is distinct from the members who compose it.

2. Limited Liability

A company being a separate person is the owner of the assets and bound by its liabilities. A company may be a company limited by shares or a company limited by

guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares.

3. Artificial legal person.

A company is an artificial person. Negatively speaking, it is not a natural person. So, a company cannot act on its own and, it exists in the eyes of the law. It has to act through a board of directors elected by shareholders.

4. Perpetual succession.

A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholders or directors. The law creates it and law alone can dissolve it. Members may come and go, but the company can go on forever.

5. Common Seal.

A company being an artificial person is similar to natural person and as such it cannot sign documents for itself. It acts through natural person who are called its directors. But having a legal personality, (8) it can be bound by only those documents which bear its signature. Therefore, the law has provided for the use of the common seal, with the name of the company engraved on it, as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company.

These were a few characteristics of a corporation [3].

3. Theories of Corporate Personality

There are various theories of Corporate Personality which have attempted to describe the nature and authority of it. Following are the principle theories of corporate personality:

1) Fiction Theory

Fiction Theory was propounded by Von Savigny, Salmond, Coke, Holland, etc. This theory says that only human beings are properly be called as ‘persons’.

According to this theory, the corporation is having a different personality as that of its members. The theory propounds that juristic person has only a fictitious will. According to this theory, the legal personality of entities other than human beings is the result of a fiction [4].

Gray supported this theory by saying that only human beings are capable of thinking, whereas a corporation is a non-human entity to which we attribute will through humans who are capable of thinking and assign them legal personality [5].

2) Concession Theory

Concession theory is concerned with the sovereignty of the state. It is of the view that as the corporation is a legal person recognised by state or law, so it is of great importance. According to this theory, a juristic person is the creation of the state. This theory is allied to fiction theory. The supporters of this theory are almost same. The theory simply says that the corporate bodies are having legal personality only to the extent granted by the state. This theory is different from fiction theory on the point that it identifies law with the state while fiction theory does not [6].

3) Realist Theory

Realist theory is also known as "Organic Theory". This theory was propounded by Gierke and Maitland was the supporter of this theory. This theory says that a corporation is having all the characteristics just like a natural person. So, he opines that legal or juristic person is really just like the human beings. It further says that juristic persons are not fictitious and also do not require the recognition of the State [7].

4) Group Personality Theory

This theory is also known as Institutional Theory. The exponent of this theory was Hauriou. The theory has its basis in collective outlook. It says that individual integrates into association and becomes part of it. Thus, it believed that every collective group has real mind, the will and power of action. So, a corporation has the real existence and is independent of the fact that whether it is recognised by the state or not [8].

5) Symbolist Theory

This theory is also known as Bracket Theory. The theory was propounded by Rudolph Ritter von Ihering. The theory says that the only persons who are having rights and duties are the members of the corporation. The granting of legal personality means putting a bracket on the members so that they can be treated as a single unit when a corporation is formed [9].

These were the few major theories of corporate personality.

4. Conclusion

It can be therefore said that the modern definitions are all but the genesis of these five theories. Without these theories, it would have been very difficult to attribute a meaning and a definition to the word Corporation and it would have become very vague. It is with the help of these theories that the modern definition of corporation implies that it is a separate legal entity, having an identity of its own and perpetual succession. A corporation is capable of surviving beyond the lives of those who actually are its beneficiaries.

References

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