MBA 716:
Introduction to Corporations

Project Report Submission

‘Shell Companies’

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Shell Companies

An existing company with no existence?

We studied Friedman's description of corporations as 'artificial' persons and how the rights, the same as those given to actual human beings, were granted to these entities. We have been debating if this much freedom in the definition of a corporation benefits everyone or just those who own and manage such corporations. On one side, we are giving the stature of a person to a corporation with all the rights, but on the other side, leaving out the duties, responsibilities, and liability for its actions. When a constitution provides rights to individuals in the state, it also expects certain responsibilities, and any wrongdoing implies that the liability is put entirely on the individual. Whenever a scam is unearthed, the one thing that we are bound to discover is a bunch of huge loans given to the corporation(s) under scrutiny by several banks. Why is it that these banks are willing to give out such humongous loans without any common-sensical explanation, but when an ordinary citizen asks for a loan, their treasury dries up? These loans are never used for their intended person, and then they disappear, giving rise to scams that we analyze.

We will see how these corporations launder this money and evade taxes with the help of 'shell' corporations. What kind of entities are these shell companies, and how can a corporation use these? What are the pro and cons of setting up these entities and their impact on the market? Are the advantages that the 'shell' companies provide the parent corporation (and the market?), enough to justify their existence? If shell companies have proven to be a means to carry out 'illegal' and 'immoral' activities by a corporation, then are regulations needed to control them? If yes, then to what extent, considering their benefits, and how can regulations be established when they are so difficult to track? We will look at all these aspects of a shell corporation and try to present our analysis of these questions and their answers.

1. Introduction

Every now and then, we hear about some big businessman or some big corporation being caught in some scam/fraud case, and one of the allegations on them is of setting up shell companies to launder money and/or evade taxes.

Shell companies are like any other company but with a few unique attributes. Shell corporations are companies with no physical presence. They are corporations that only exist on paper. There are mostly no employees in the corporation; they do not own any physical assets or have any real business operations.

1.1 Why do shell companies exist?

If these shell companies are just 'fake' companies with no activities, structure, and market products like a corporation, then what is the point of their existence?

Generally, shell companies are registered in places called 'tax havens'. These places, like the British Virgin Islands, Cayman Islands, Netherlands, Switzerland, and Mauritius, are called 'tax havens' because the tax levied on corporations registered in these countries is exceptionally low or even zero in some cases. So many corporations set up shell companies in these places and divert their financials toward these shell companies to evade comparatively heavy taxes in their respective countries. So tax evasion becomes a big reason for the existence of shell companies.

These tax havens also provide another valuable benefit to the corporations, that is, banking secrecy and leniency in scrutiny. While many companies put on several regulations on the corporations to aim towards transparency in the financials of a company, these countries provide the freedom to these corporations to be carefree about international pressure and regulations. This is a big reason why many large private firms set up additional financial headquarters here, while many set up shell companies. These relaxed corporate scrutinies and corporate laws in these tax havens provide some level of anonymity to the financials of big corporations. At the same time, some prominent businesspersons also enjoy this privacy for their accumulated wealth.

But does that mean that the existence of tax havens is the only reason behind the existence of shell companies? No. We still hear about discoveries of frauds consisting of shell companies registered in the respective countries. This is enabled by the globally accepted

concept of the corporate veil. Every time a law agency tries to investigate some suspicious financial transactions, they might end up in some LLC and have no idea who the managers are behind it. But one certainly cannot deny the complementary nature of the existence of shell companies with the existence of tax havens.

1.2 Other uses of shell companies

Apart from the serious uses of shell companies, there are some relatively harmless uses too. Company X can set up shell companies temporarily if they want to conduct business with some other individual/corporation Y with whom they do not want to be seen conducting business. This way, the business transaction will be recorded between the shell corporation and company Y, instead of the companies X and Y. If the transaction ever falls under scrutiny, company X will be safe from the involvement.

Some companies can also set up shell corporations for specific use cases like asset holding and investment in other companies. A corporation might want to diversify its operations but does not want to take all the risk and encash the expenditure cheques with the main corporations as it might hurt the current financial standing of the company in the market, which could shake the investor sentiment.

2. DHFL ₹34,000 Cr Loan Fraud Case

The Biggest Banking Fraud in India ever

DHFL is an NBFC, i.e., Non-Banking Finance Corporation. An NBFC[1] is a "financial institution that does not have a full banking license and cannot accept deposits from the public". In DHFL's case, it provided house loans to middle-income and lower middle-income groups. For this purpose, NBFCs, like DHFL, were able to borrow heavy loans from big banks (or, as in this case, a consortium of several banks) at relatively low interest rates and loan that money out further to people for house building.

In January 2019, *Cobrapost*, an investigative news site, dropped a bombshell on the Indian financial market. They released their investigations on DHFL's alleged suspicious activities and transactions, thereby exposing DHFL's systemic financial fraud to the world. They showcased to the entire world how the promoters of DHFL, the Wadhawan Family, utilized tens of thousands of crores of capital lent to them by several big public and private sector banks for housing purposes for their personal uses. We shall see what kind of

fraudulent activities *Cobrapost* accused DHFL of and how they are related to the discussion of shell companies. All the facts given below have been taken from the post[2] itself.

The main accusation on DHFL is that they have been siphoning off money via unsecured loans to shell companies and other suspicious entities under the pretense of some fake purposes, where these shell companies and other entities were owned and/or controlled by the members of the Wadhawan family and closely related people, thereby financially benefiting these people on a personal level.

RKW Developers Pvt. Ltd., Skill Realtors Pvt. Ltd., and Darshan Developers Pvt. Ltd. are three companies whose administration is closely linked to the Wadhawan family. Surprisingly, according to the donation records of the BJP, these companies have donated crores of capital to the political party when their profits (even losses) were in a few lakhs or even thousands of rupees.

- RKW Developers Pvt. Ltd donated ₹10 Cr to the BJP in 2014-15 when their own profits were in mere lakhs. Moreover, they conveniently failed to report this in their balance sheet. This is a clear indicator of how the funds were illegally disbursed to the political domain in terms of donation because, according to RKW's own annual balance sheet, it could not have been able to afford the donations. Then where did the money come from exactly?

Year	2011-12	2012-13	2013-14	2014-15
Profit	₹21,96,138	- ₹24,77,828	₹56,92,197	₹45,34,554

- Skill Realtors Pvt. Ltd donated ₹2 Cr to the BJP in 2014-15 when their profits were in mere thousands. Similar to the above case, they also failed to report it in their balance sheets which point to the suspicious origin of that money.

Year	2011-12	2012-13	2013-14	2014-15
Profit	- ₹40,109	- ₹34,697	₹61,419	₹26,914

- Darshan Developers Pvt. Ltd. donated ₹7.5 Cr to the BJP in 2016-17 when their profits were just a little shy of ₹3 Lakh. Although they mentioned it in their balance sheets as an expense, they still violated Section 182 of the Companies Act, where a

company cannot contribute more than 7.5% of the net profits earned during the three preceding fiscal years. Instead, they had a net loss in the preceding three years, which would render them ineligible for political donations. But why wasn't this noticed and acted upon by the authorities when everything was in the public domain? This clearly showcases the powerful influence and the connections that the Wadhawan family had over the political framework too.

Year	2013-14	2012-13	2013-14	2014-15
Profit	- ₹5,13,406	- ₹4,650	₹2,82,691	- ₹7,69,68,968

Furthermore, huge unsecured loans were sanctioned to around 45 companies (which held interests of Kapil, Aruna and Dheeraj Wadhawan), out of which 34 companies stand out as dubious in broad daylight. These companies do not have any business or income, operate from the same physical and email addresses, have the same accounting firm as their auditors, and are run by the same group of initial directors. These companies stand out as classic examples of shell companies. These companies had a nominal ₹1 Lakh as their capital; many did not even file their balance sheets with the Registrar of Companies (RoC), nor did they file any charge documents for loans on the MCA website (which is mandatory for such loans). Hence, unsecured loans were given out to many such companies without even any collateral.

Following are some examples of the shell companies -

Name of the Company	Registered Address	Profit/Loss filings	Loan amount
Azinova Constructions Pvt. Ltd.	Shop No. 1, Milansar Sachs, near Farooqia Masjid, Gilbert Hill, Andheri West, Mumbai - 400058 Email : inform2co@gmail.com	FY 2015-16 : 0 FY 2016-17 : 0 FY 2017-18 : Not Filed	₹498.67 Cr
Fulgent Real Estate Pvt. Ltd.	Shop No. 2, Milansar Sachs, near Farooqia Masjid, Gilbert Hill, Andheri West, Mumbai - 400058 Email : fulgentreal@gmail.com	FY 2015-16 : 0 FY 2016-17 : -₹16,000 FY 2017-18 : Not Filed	₹381.58 Cr
Manpreet Developers Pvt. Ltd.	Shop No. 3, Milansar Sachs, near Farooqia Masjid, Gilbert Hill, Andheri West, Mumbai - 400058	FY 2015-16 : 0 FY 2016-17 : -₹500 FY 2017-18 : not Filed	₹640.28 Cr

	Email : inform2co@gmail.com		
Tenacity Real Estate Pvt. Ltd.	Shop No. 5, Milansar Sachs, near Farooqia Masjid, Gilbert Hill, Andheri West, Mumbai - 400058 Email : inform2co@gmail.com	FY 2015-16 : 0 FY 2016-17 : -₹16,000 FY 2017-18 : Not Filed	₹519.03 Cr
Faith Realtors Pvt. Ltd.	Office No. 601-A-01, A Wing, 6th Floor, Kaledonia Sahar Road, Andheri East, Mumbai - 400069 Email : sayalihs2102@gmail.com	FY 2015-16 : 0 FY 2016-17 : -₹7.96 Cr	₹562.18 Cr
Able Realty Pvt. Ltd.	Office No. 601-A-01, A Wing, 6th Floor, Kaledonia Sahar Road, Andheri East, Mumbai - 400069 Email : sayalihs2102@gmail.com	FY 2015-16 : 0 FY 2016-17 : 0	₹183.68 Cr
Emergence Realty Pvt. Ltd.	Office No. 601-A-01, A Wing, 6th Floor, Kaledonia Sahar Road, Andheri East, Mumbai - 400069 Email : emergencerealty@yahoo.com	FY 2015-16 : -₹53,000 FY 2016-17 : -₹7.61 L FY 2017-18 : Not Filed	₹161.31 Cr
Poseidon Realty Pvt. Ltd.	Office No. 601-A-01, A Wing, 6th Floor, Kaledonia Sahar Road, Andheri East, Mumbai - 400069 Email : sayalihs2102@gmail.com	FY 2015-16 : -₹28,000 FY 2016-17 : -₹27.8 L	₹316.22 Cr
Makshi Real Estate Developers Pvt. Ltd.	Office No. 601-A-01, A Wing, 6th Floor, Kaledonia Sahar Road, Andheri East, Mumbai - 400069 Email : inform12com@gmail.com	FY 2015-16 : -₹57,386 FY 2016-17 : -₹10.9 Cr	₹172.58 Cr
Lookout Realty Pvt. Ltd.	B-702, Sarvodaya Building, Kher Nagar, M.H.B. Colony, Bandra East, Mumbai - 400051 Email : inform12com@gmail.com	FY 2015-16 : -₹26,000 FY 2016-17 : -₹38,000 FY 2017-18 : Not Filed	₹744.87 Cr
Revolution Realty Pvt. Ltd.	B-702, Sarvodaya Building, Kher Nagar, M.H.B. Colony, Bandra East, Mumbai - 400051 Email : chaturvedi1211@gmail.com	FY 2015-16 : -₹38,000 FY 2016-17 : -₹21.4 L	₹242.18 Cr

Kapil and Dheeraj Wadhawans, the major promoters of DHFL, constituted a majority in the Finance Committee of DHFL, which was tasked to approve loans of amounts more than ₹200 Cr. Such huge amounts of loans are usually disbursed in small parts after reviewing the progress of the promised project by the borrower. This position of power and influence helped them ensure that these large loans were approved without any scrutiny and official named disclosures. Hence, several loans were given out to self-created shell companies under the name of the "Slum Rehabilitation Programme" in Maharashtra. These loans of thousands of crores rupees were sanctioned as a single payment without DHFL verifying if there was any rehabilitation going on. This clearly is a red flag because no financial corporation in their right mind would ever sanction such huge loans without verifying the high probability of the return of the loaned funds unless the funds were loaned out to dubious companies controlled by the promoters (in this case, the Wadhawans) themselves.

In response to these revelations, the banks, who had lent money to DHFL, held a meeting and appointed *Klynveld Peat Marwick Goerdeler (KPMG)* to conduct a "special review audit" of DHFL's books from April 1, 2015 to December 31, 2018. KPMG, in its audit report, red-flagged how the funds were being diverted, under the name of retail loans, to entities connected to the promoters, i.e., the Wadhawan Family themselves. In the forensic audit, KPMG observed that "*large amounts were disbursed as loans & advances by the borrower company to a number of interconnected entities and individuals with commonalities to DHFL Promoter Entities, which were used for the purchase of share/debentures.*"

Finally, DHFL started facing the consequences of such financial fraud in mid-2019. DHFL defaulted their loan repayments of around ₹ 960 Cr in May 2019, which it shrugged off by citing a temporary cash crunch in the DHFL books. But by July 2019, it had defaulted on all loan repayments. The depositors and banks started filing cases against DHFL after they defaulted on their loan repayments. Later that year, the banks declared the DHFL loans a Non-Performing Asset (NPA), and in 2020, the banks declared them a fraud. According to the Union Bank of India (UBI), a consortium of 17 banks headed by the UBI had provided a credit of around ₹ 42,871 Cr to DHFL between 2010 and 2018. In its complaint[3], the UBI alleged that DHFL has been siphoning off these public funds for illegal purposes under the garb of fake retail loans and by using several shell companies, and had cheated the consortium of ₹ 34,614 Cr. In the next few months, the government started looking into allegations of money laundering and the involvement of DHFL's promoters with criminal enterprises, with the insolvency process in the background.

In 2020, the Reserve Bank of India (RBI) dissolved the board of directors of DHFL, citing "governance concerns and defaults," and appointed R. Subramaniakumar, ex-MD and CEO of Indian Overseas Bank, as the administrator of DHFL. The National Company Law Tribunal (NCLT) began the insolvency proceedings on November 20, 2020. In January 2021, Piramal's bid got approval from the committee of creditors (CoC). Under this plan, 40% of the total outstanding dues could be recovered by the creditors[4].

In October 2022, CBI filed a charge sheet, accusing DHFL of having made 87 shell companies and 2,60,000 fake borrowers to launder money, cheated from the banks. CBI said, *"Wadhawan and others induced the consortium banks to sanction huge loans aggregating to ₹ 42,871.42 Cr and siphoned off and misappropriated a significant portion of the said funds by falsifying the books of DHFL and dishonestly defaulted on repayment of the legitimate dues of the said consortium banks. That caused a wrongful loss of ₹ 34,615.00 Cr to the consortium lenders."*[5]

3. Short Selling by Tiger Global

3.1 Short selling:

In 2014, short sellers in Quindell and Blinkx had good times since the shares in these companies fell by 76% and 88%, respectively, thereby making them highly profitable trades for investors going short in stocks[1]. The major short seller remained unidentified at that time, but later it was discovered that a $6.5 billion hedge fund called Tiger Global was the holding company behind these short sales. Even though there is no evidence whether Tiger Global had any contact with the critical research that was published against Blinkx and Quindell. At times, considering the fact that only some investors were making money out of short selling while the banks bled, politicians argued about putting a ban on short selling. Still, economists argue that short-selling helps us identify the true worth of the company and help the market identify troubled companies.

Previously we have argued about the uses of shell companies. When it comes to larger organizations, short-selling is one of the key uses of shell companies. Recent years have shown us that even though the 'market corrects itself", there might be times when profits are made in falling markets, and that's when short selling comes into the picture. When you are Bullish on the market, you buy the shares. Then you sell them off once they reach a higher

price, so chronologically, you first buy and then sell, while in short selling, you buy a stock when you are bearish on the stock, i.e. you sell first at a high price and then buy once the prices fell down, hence here you don't own what you are selling. Short selling is a controversial activity since it involves a lot of risks as well as can distort the prices and markets for a given security hence the practice has been banned in several financial markets in various countries.

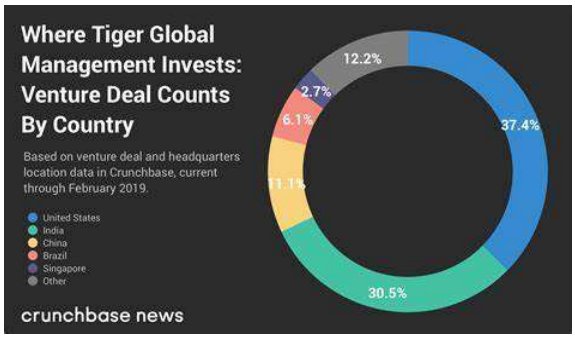
3.2 Tiger Global Management, LLC

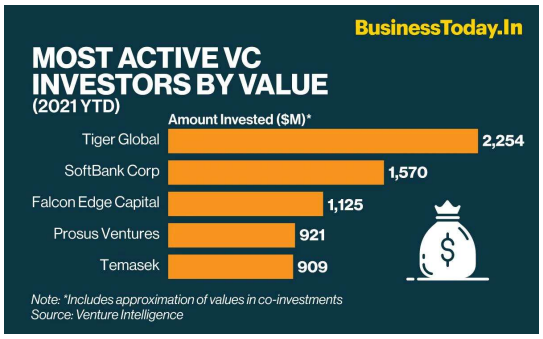
Tiger Global Management, LLC (often referred to as **Tiger Global** and formerly known as **Tiger Technology**) is one of the world's largest hedge funds American investment firms. It mainly focuses on the Internet, software, consumer, and financial technology industries. Tiger Global has two equity strategies, public and private, i.e. to invest in publicly traded companies and growth-oriented private companies from early to late stages, especially in US, China, and India. The firm has flagship funds like Tiger global investments, a long-short fund, and Tiger Global Long Opportunities for long only. Some notable venture capital investments include DST Global, Facebook, Glassdoor, Linkedin, NExtdoor, Quora, Sensetime, Softbank group, Spotify, strongDM, Alibaba, ByteDance, Carta, Coinbase, Credit Karma, Databricks, etc[4].

TIGER GLOBAL INVESTMENTS IN INDIAN STARTUPS - 2021

Company	Amount ($M)*	Post Money Valuation ($M)	Date
Spinny	105	787	Jul-2021
Flipkart	3600	37600	Jul-2021
Classplus	65	165	Jun-2021
Kutumb	26	181	Jun-2021
GoMechanic	42	321	Jun-2021
Apna.co	70	570	Jun-2021
Locus	50	N.A.	Jun-2021
PharmEasy	40	4000	Jun-2021
Progcap	25	N.A.	Jun-2021
Quizizz	32	N.A.	Jun-2021
DealShare	144	400	May-2021
Koo App	30	100	May-2021
Moglix	120	1000	May-2021
Plum Insurance	16	N.A.	May-2021
Cred	215	2214	Apr-2021
ChargeBee	125	1400	Apr-2021
Groww	83	1000	Apr-2021
Gupshup	100	1400	Apr-2021
Pristyn Care	53	550	Apr-2021
Sharechat	502	2100	Apr-2021
Urban Company	255	1000	Apr-2021
Dream11.com	400	5000	Mar-2021
Infra.Market	99	992	Feb-2021
Ally	50	N.A.	Feb-2021
CoinSwitch	25	500	Feb-2021
Innovaccer	105	1300	Feb-2021
Zomato	576	5400	Feb-2021
Cred	82	807	Jan-2021
Unacademy	50	2000	Jan-2021

*Includes investments by co-investors
Source: Venture Intelligence





When it comes to Indian startups, in terms of the number of deals made, Sequoia Capital has made the most investments, followed by Tiger Global, and yet Tiger Global has been the most active investor.

Tiger Global used Anonymous Cayman Island-based entities behind large bets against 12 European companies. It appears this Tiger cub is particularly adept at shorting companies discreetly, under different names, including Roble SL, Fest NV, Blau GmbH, and Fresco SRL, all of which have baffled people who routinely follow short disclosures.

3.3 Shorting of Quindell

In 2014, a shell company under the name of Roble SL, shorted 4.26% of Quindell's shares, which is about $12.8 million. Tiger Global remained the mystery investor to place the bet against the share prices of Quindell. No one paid attention to these strangely named mystery companies that were shorting certain companies, but then in 2014, when one of these companies, Roble SL, built up a sizable position in Quindell and shares fell very sharply, that's when these seemingly small unknown hedge funds, became distinctively noticeable. It was evident that they were doing very deep research into the companies they were targeting. Tiger Global, being one of the world's largest and most successful hedge funds, is a big player when it comes to this. Even though it's a large entity, it's known to keep its position very close to itself, not even revealing to its investors what it's shorting. Since it always ends up making humongous profits, the investors don't question the mystery. Hence, when Tiger Global was anonymously shorting in the European market, it was difficult to identify the company. The use of the Cayman Islands not revealing the name of the actual investor has, in some way, helped the European short-selling regulation. Later, Quindell's chairman resigned from the company, and its share price fell to an all-time low.

Soon after Tiger global shorted Quindell, Gotham City Research posted a critical online report about Quindell, a result of which was that shares lost more than half of their values[3].

Such extensive use of offshore shell companies raises a question mark on the rules and regulations set up by the market, here the European market rules, which include the disclosure of the identity of the holding company when huge bets are in the picture. Initially, the anonymous traders profited through falling bank share prices in 2012, and in order to avoid that, the rule came into the picture, according to which any short position above 0.5% had to be made public. The idea behind this was to "increase the transparency and consistency in the European market." This supported Tiger Global *legally* and allowed it to use the Cayman Islands registered companies since it's not against the rules to use a subsidiary.

Now the question comes of why these short sellers wish to stay anonymous. A basic explanation can be that to avoid attention and easily borrow shares necessary to establish a large short position since revealing the identity would attract other investors, which would, in turn, make it difficult to get the shares. And effectively, the cost might also increase since the supply is the same, but demand might increase, therefore affecting overall profits.

3.4 Other short-sellings

Blinkx Plc:

In December of 2012, Blau GmbH declared a short position in a UK-listed internet company, Blinkx Plc. In. which had surged share prices by almost 200 percent at that time. Later in January 2013, research was published containing critical statistics about the company by a Harvard Professor that trembled its shares, leading to huge amounts of profits, amounting to millions of pounds for Tiger Global. However, there is no evidence that the authors were in any way related to Tiger Global, and we are supposed to believe that this was a mere coincidence.[2]

Nokia:

Later in 2013, when it came to short-selling Nokia, big players like Coatue, Lone Pine, Maverick Capital, Viking Global, Discovery Capital, and Blue Ridge were present, and only Tiger Global was found to be missing, but later it came to light that it had been actually shorting Nokia this whole time, with the shell company Fest NV with one of the largest single short bets in Europe at that time.

Monitise:

Currently, Tiger Global is shorting Monitise Plc through Blau GmbH, and shares are down over 56%. Coatue Management is shorting Monitise.

4. GST frauds

We have previously argued how shell companies help corporations evade taxes, but is it restricted to large corporations? Well, there have been a lot of cases recently where individuals were involved in tax frauds amounting to crores just through creating shell companies.

In 2022, Raigad, a 29-year-old residing in Panvel, who happens to be a BMA graduate, was arrested for generating fraudulent ITC (Input tax credit) by creating 15+ shell companies[1]. He was arrested under Section 69 of the Central Goods and Services Act, 2017 for committing offenses under Section 132 of the constitution. The shell companies were used for the generation and utilization of fraudulent GST ITC of 33 crores through fraud invoices of over 180 crores. The Central Goods and Services Department has been involved recently in extensive data mining, data analysis, and other techniques in order to identify tax evaders.

5. Analysis of Business Laws in accordance with Shell Companies

We saw above how shell companies are being used by global multinational conglomerates and huge financial corporations to divert funds and play a major role in the global financial market. It is pretty clear that these shell companies are just a medium for such atrocities. The corporations misuse corporate rights like the limited liability and corporate veil when they inculcate shell companies in their business transactions. We can curb this by striking at these nonsense personhood rights and privileges provided to these artificial entities and re-evaluating the concepts of limited liability and corporate veil in the context of such dubious shell companies and their holdings in other companies. But striking such a huge part of the corporate ecosystem in the present scenario, which has made the world economy so delicate, we need to try to cater to these individual cases, learn from them, and frame regulations so that these manipulations of the corporate privileges do not end up in the theft of public money (as in the case of DHFL). Following are some laws that try to regulate the existence of shell companies and curb any suspicious transactions -

5.1 Section 447 of the Companies Act, 2013[1]

This law comes under chapter 29 of the Companies Act and is termed as **Punishment for Fraud**. This law describes fraud as *any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person.* The law also defines a financial limit to conjoin the fraud with the prison sentence. It is a quite obviously worded statement/definition, but it fails to provide any concrete structure for conviction.

The law seems very subjective and manipulative as any act can be manipulated and termed as an act towards the interests of the company. And if the fraud injured the company's interests (like in the DHFL case as the company went under), it can be termed as a risk. The accused can excuse themselves, citing limited liability for such risks and investments.

5.2 Section 185 of the Companies Act, 2013[2]

This law comes under chapter 12 of the Companies Act and explains the restrictions of loans to directors and related entities. It prohibits a corporation from advancing loans to or giving security for loans taken by, any director of the company, any holding companies involved, or any other firm where any director or his/her relatives are partners. This is a good measure under which we can curb advancements of loans made to companies that are under the companies' directors' interests or of those with higher powers in the company.

However, this law does give an exemption to cases where such loans or securities are given by a holding company to its wholly-owned subsidiary. We have already seen this in the case study of the Adani group, wherein they made rampant and haphazard loans to their subsidiaries which ultimately landed itself under "stock manipulation" scrutiny. Introducing some kind of "penalty measure" to allow for only essentially required loan transfers might help curb the section's exploitation. This exemption simply allows companies to create wholly-owned shell companies as subsidiaries and easily write off loans and divert funds.

5.3 Schedule III of Companies Act, 2013[3]

This part of the Companies Act, 2013 mandates corporations to submit financial statements in a prescribed format. This is actually a good measure to control the misuse of shell companies as they do not maintain a proper balance sheet. If the required documents are

not there, then these companies can be deemed fraudulent, and so will the dealings associated with them. In this context, this law seems to put a tight rope around the neck of shell companies. But this law can also be escaped from, as many shell companies just submit a balance sheet with zero profit or loss, which makes it a legitimate company in the pretext of this law. This law also provides a contingency period for corporations that fail to submit financial records. This is where the hollow nature of the shell companies helps these corporations to spring up a new shell company when the previous one gets its licence cancelled due to non-submission of financial statements within the contingency period. Moreover, this law is only applicable in India, which is why a majority of shell companies are located in tax havens like the Cayman Islands. So this law will just make the corporations stop registering their shell companies here in India. However, the public money can still be diverted to more obscure and shady shell companies in a foreign land, especially in places where we do not have Bilateral Trade Treaties.

5.4 Prevention of Money Laundering Act (PMLA), 2002

The Prevention of Money Laundering Act (PMLA) defines money laundering as the proceeds of any crime which is projected as untainted property. The Enforcement Directorate (ED) of India has explicit jurisdiction over cases under PMLA. Under this act, the property and assets, which are alleged to have been earned through illicit sources of money or through money laundering, can be seized by the government authorities. Moreover, the burden falls on the corporate management to showcase the proof that the ownership of the confiscated asset(s) has not been attained via any illegal sources or the proceeds of any crime.

This act is very counterintuitive when compared with the Fourth Amendment in the USA's constitution, which provides the right to protection against unreasonable searches and seizures, pertaining to individuals (and corporates). Though this act seems to be endangering the corporate ecosystem and can be misused given its stern nature, this act does force every corporate, one that is running its operations in good faith and the ones misusing the shell companies for personal gains, to be very detailed about the ownership records and transaction history details.

5.5 Benami Transactions (Prevention) Act, 1988

The Act forbids any kind of transaction in which "ownership" of the property is transferred from one head to another in turn for monetary gains or any other kind of profits.

Examples can be, purchasing a house in the name of your son, avoiding hefty tax payments, etc. In these cases, the property remains registered under a certain person's name while some other person is actually the one who pays for the property.

Since a corporation can be a property, this law can be extended to corporations as well to curb wrongdoings by them. Shell companies are companies on paper, with their purpose hidden from the world, usually dealing with illegal money transactions, etc. In many cases, big corporations register their shell companies under someone else's name so that if any scrutiny arises, they'll be devoid of it. Companies tend to misuse the corporate veil right in these cases, as officials cannot form second-degree correlations during scrutiny/investigations with ownership of the shell companies. Extending this law to corporations can prevent fraudulent dealings. Hence this law might be useful in curbing fraud in corporations.

6. Comments and Further Analysis

In the DHFL case, the Wadhawans created several shell companies with the same addresses, the same directors, no balance sheet, or zero profits/loss. They loaned them hundreds of crores of rupees so as to launder the money for their personal use. A major factor that helped them in such blatant fraud via shell companies was their connections and influence among the political powers. It is quite evident with the exorbitant donations made to the majority political party, the BJP, by the companies under the Wadhawans when the companies' balance sheets did not support those donations. Moreover, the table of the shell companies makes it seem so trivial to catch such namesake companies with the intent of fraud, but in reality, it is a humongous task. We do not deny that in the present digital age and the necessity to protect public funds, it is possible to digitize the records further and use modern technology to detect such fraudulent companies and the transactions involved automatically. But then, as we have seen in most cases in our course, the state cannot be that harsh, or "it might hurt future investments into the country."

In the Tiger Global case, we saw how anonymous shell companies are being used for short selling, and all this is taking place legally. Initially, the individuals were misusing this and short selling, which made the banks suffer. Hence, the new rules made it compulsory for them to come in public once the share rises above a certain percentage. Still, there is no restriction for it being a subsidiary owned by some large corporation, so how is it different

from what was happening before? The only noticeable big difference is that now it's being done by large corporations only, who can have such huge capitals to play such games and make huge profits anonymously. And as seen in the cases of Quindell and Blinkx Plc., there have been instances that indicate Tiger Global knowing about the critical reports about to come that would affect the share prices to a huge extent, but the question is how can one certainly prove that? Is it just a coincidence, and if yes, then why do these coincidences happen with such large corporations only? Corporations who are even able to keep their anonymity from the investors, too, is it not possible that Tiger Global knew about those reports? And why did the corporations not seek help from Cayman Island laws in order to identify the short seller? Is all of this not just providing the larger organizations to become larger, not providing a fair opportunity to growing firms? Is this in some way contributing to the monopolistic state of the business? All these questions point to how these corporations are being regulated. And as soon as we go analyzing the rules associated with these, as seen in the Tiger Global case, we end up questioning the fundamental structural rules of a corporation. It's not about mending a rule and getting the correct outcome, it's more subjective than that since one links with another part of the regulation, and it all needs to be examined at the same time in order to improve the situation for a longer term.

The business laws that we briefed through are meant to provide safeguards against such money laundering and fraud committed by corporations using shell companies. Still, a major flaw in these laws is that the exact definition of shell companies has never been defined, and hence no concrete law against shell companies has ever been written. This gives a major scope to these corporations to misuse their political and economic influences to their benefit. Corporations enjoy their corporate veil and limited liability rights to hide all illegal and immoral activities. Surveillance and tracking of such companies and their transactions are what can stop these frauds. In this new digital age, when several social media apps can track user data and show customized advertisements to their users, when all citizens are required to link all bank accounts and voter IDs to their Aadhaar profiles for a unified system, we can also have such unified digital systems with stronger algorithms to detect (or even predict) such fraudulent companies.

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