State Of Rajasthan And Ors vs Gotan Lime Stone Khanij Udyog And Anr on 20 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 510, 2016 (4) SCC 469, (2016) 2 RAJ LW 1439, (2017) 3 PAT LJR 41, (2016) 4 MAD LW 465, (2016) 1 SCALE 392, (2015) 1 WLC(SC)CVL 546, (2016) 159 ALLINDCAS 232 (SC), (2016) 2 ALL WC 2140, (2017) 2 JLJR 434, (2016) 2 CURCC 72, (2016) 121 CUT LT 533, (2016) 4 ALLMR 450 (SC), (2016) 1 WLC(SC)CVL 546, 2016 (3) KCCR SN 326 (SC)

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Bench: Adarsh Kumar Goel, Anil R. Dave

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                    REPORTABLE

                                 IN THE SUPREME COURT OF INDIA
                                 CIVIL APPELLATE JURISDICTION



                                 CIVIL APPEAL No. 434 OF 2016
                           (ARISING OUT OF SLP (CIVIL) NO.23311 OF 2015)



          STATE OF RAJASTHAN & ORS                        …APPELLANTS


          VERSUS


          GOTAN LIME STONE KHANJI UDYOG PVT. LTD.
          & ANR.                                       ...RESPONDENTS




                                       J U D G M E N T
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ADARSH KUMAR GOEL, J

1. Leave granted. The State of Rajasthan is aggrieved by the quashing of its order dated 16th December, 2014 whereby it declared its earlier order dated 25th April, 2012 as void and cancelled the mining lease No.45 of 1993. By the said earlier order the aforesaid lease was permitted to be transferred in favour of Respondent No.1.

2. Question for consideration is whether looking at the substance of the transaction in question, an illegal transfer of mining lease was involved? Whether transformation of partnership into company and transfer of lease rights to such company, though apparently valid and permitted, has to be seen with the next transaction of transfer of the entire shareholding to a third company for a price thereby avoiding declaration of real transaction of sale of mining lease which was not permissible. Further question is whether on this basis the State is justified in cancelling the lease which the High Court has quashed.

3. FACTS : M/s. Gotan Limestone Khanji Udhyog (GLKU), a partnership firm, held a mining lease for mining limestone at village Dhaappa, Tehsil Merta, District Nagaur in area of 10 sq. km at fixed rent of Rs.1,42,85,224/- per annum for which third renewal for 30years was granted w.e.f. 8th April, 1994. The said lessee applied for transfer of the lease in favour of respondent No.1 herein, M/s. Gotan Limestone Khanji Udhyog Pvt. Ltd. (GLKUPL) on 28th March, 2012. The application dated 28th March, 2012 states that the lessee was a partnership firm and wished to transfer the lease to a private limited company which was mere change of form of its own business by converting itself from a partnership firm into a private limited company. The partners of the firm and Directors of the company were the same and on transfer, no illegal benefit, price or premium was taken from the transferee. The lease was 40 years old and there was no impediment in the transfer. The transferee will comply with the rules and regulations. The transfer was allowed on 25th April, 2012 on that basis. After seeking the said permission, the newly formed private limited company instead of operating the mining lease itself sold its entire shareholding to another company allegedly for Rs.160 crores which is alleged to be the sale price of mining lease.

4. On this development, a show cause notice dated 21st April, 2014 was issued to Respondent No.1 proposing to cancel the transfer order on the ground that contrary to the statement in the application for transfer that the partners of the partnership firm will be Directors of the private limited company, the Directors of the private limited company who were partners of the firm were replaced by new Directors on 6th August, 2012 and the private limited company was listed as subsidiary of Ultra Tech Cement Limited Company (UTCL) with the Bombay Stock Exchange. This development showed that the transfer was secured by a conspiracy and in circumvention of the rules.

5. Respondent No.1 contested the show cause notice. In its reply, it stated that the State Government itself had defended the transfer in its affidavit in reply to the Writ Petition No.404 of 2013 filed by M/s. J.K. Cement Limited (JKCL). There was no bar to the change of Directors and shareholding of a company under the rules. Thus, transfer of shareholding and change of Directors did not amount to transfer of mining lease nor it affected validity of permission for transfer from GLKU to GLKUPL.

6. This stand was held to be unsatisfactory by the competent authority. Accordingly, the order dated 25th April, 2012 was rescinded and declared void vide order dated 16th December, 2014. It was also observed that the department had filed its revised reply before the High Court and according to the said reply, the transfer was in violation of Rule 15 of the Rajasthan Minor Mineral Concession Rules, 1986 (the Rules).

7. It appears that an FIR dated 7th August, 2014 was also registered with the Jaipur Main Police Centre on a complaint of one Dr. Kirit Somaiya on the allegation that GLKU had sold the mining lease to UTCL which was not permissible and thereby unlawful gain was acquired in connivance with the mining department and loss was caused to the State. The erstwhile partners of the firm which was original lessee, had in effect transferred the lease in favour of S/Shri K.C. Birla, R. Mehnot and M.B. Agarwal who took over as Directors of the Private Limited Company at the instance of UTCL.

8. The respondent No.1 filed S.B. Civil Writ Petition No.9669 of 2014 seeking quashing of show cause notice dated 21st April, 2014, the order dated 16th December, 2014 and other consequential orders. It was submitted that the order dated 25th April, 2012 permitting transfer of lease from the partnership firm to the private limited company was in order. After the said transfer, the entire shareholding of the company was transferred by the promoter directors in favour of UTCL in July, 2012, except some shares which were transferred in joint names of UTCL with some private persons who were employees of the said company. Thus, the writ petitioner-Respondent No.1 became wholly owned subsidiary of UTCL. The Directors were replaced by the nominees of the holding company. JKCL had made an application seeking permission of part transfer of the mining lease and its application was rejected on 5th September, 2012 against which Writ Petition No.404 of 2013 was filed. The State Government in its reply defended its order dated 25th April, 2012. After the assembly election in December, 2013, show cause notice dated 21st April, 2014 was issued and a supplementary reply was filed by the State in October, 2014 taking a different stand. It was submitted that the order dated 16th December, 2014 had not dealt with the objection regarding applicability of Rule 72 (treating the lease void) and the judgments relied upon by the writ petitioner in its reply. Change in the pattern of shareholding and directorship of the company was of no consequence for purposes of the Rules. The mining rights are vested in the writ petitioner company as a consequence of order dated 25th April, 2012 and change in pattern in shareholding or directorship did not affect the said rights. Shareholders and directors are not the owners of the assets of the company. Company was a distinct entity and mining lease was owned by the Company.

9. The writ petition was defended by the State with the plea that change of all the directors and shareholding amounted to transfer of the lease in violation of Rule 15 which was void under Rule 72. Thus, the order dated 16th December, 2014 was valid.

10. JKCL, who had applied for transfer of part of mining lease and was aggrieved by rejection of its application moved an application before the High Court for being added as a party to oppose the writ petition and was impleaded as a respondent in the writ petition, vide order of the High Court dated 28th January, 2015. The impleaded party supported the order of cancellation inter alia on the ground that one of the conditions in the order dated 25th April, 2012 was that the document of transfer was to be executed within three months which was not done. Further, the transfer of entire shareholding by the newly formed company was indirect way to transfer the lease for consideration by GLKU to UTCL which was not legally permissible.

11. The main issue framed by learned Single Judge for consideration was as follows:

> "Whether the action of shareholders of the Company in transferring its shares to Ultra Tech Cement Limited and consequently, the Company becoming wholly owned subsidiary of Ultra Tech Cement Limited amounts to violation of Rule 15(1) (b) of the Rules is the issue which requires consideration."

12. After referring to the decisions of this Court in Bacha F. Guzdar vs. CIT[1], Heavy Engineering Mazdoor Union vs. State of Bihar[2], Electronics Corporation of India Limited vs. Secretary, Revenue Department[3], Amit Products (India) Ltd. vs. Chief Engineer (O&M) Circle[4] and Balwant Raj Saluja & Anr. vs. Air India Limited & Ors. [5] learned Single Judge concluded as follows:

> "In view of the law laid down by the Hon'ble Supreme Court in the case of Government Companies, inter-se relationship between holding and subsidiary Companies and fundamental principles regarding distinction between a shareholder and the Company, it is apparent that merely on account of the Company becoming a subsidiary of Ultra Tech Cement Limited on account of certain action of the shareholders of the Company, it cannot be said that the Company is being directly or indirectly financed to a substantial extent or the Company's operations or undertakings are substantially controlled by Ultra Tech Cement Limited, regarding which there are absolutely no allegations or material whatsoever. Therefore, on account of the petitioner-Company becoming subsidiary of Ultra Tech Cement Limited, in view of the law laid down by the Hon'ble Supreme Court as noticed hereinbefore, it cannot be said that ipso facto the provisions of Rule 15(1) (b) of the Rules have been violated by the lessee i.e. petitioner- Company."

13. Aggrieved by the judgment of the learned Single Judge, the appellant and the impleaded party JKCL filed appeals before the Division Bench of the High Court which have been dismissed by impugned order dated 14th May, 2015. The Division Bench while affirming the view taken by the learned Single Judge, inter alia, observed:

> "41. The entire corporate business is run through contracts, which may give statutory or non-statutory rights to the Company. A Company may apply and become the owner of the license, permit, concessions and lease under the statutory schemes of various statutes, under which the Company carries out its business. In all such cases, the license, concessions, permit and lease are the property of the Company and not of its shareholders. The shareholders may keep on changing and the control and management in the Company may also undergo changes on such transfer of shares, but the assets and properties of the Company including license, permit, concessions and lease continue to belong to the Company and that any acquisition or transfer of such assets will not relate back to the share-holding of the Company or the management of the Company, which may change on the change in the shareholding of the Company.
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43. We do not find any substance in the reliance placed on the judgment of Supreme Court in Victorian Granites (P) Ltd. V/s P.Rama Rao and ors.

((1996) 10 SCC 665), in which it was held that the socio-economic justice is the arch of the Constitution and the public resources under Article 39(b) must be 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 principles sought to be developed in Victorian Granites (P) Ltd. (supra) have not been accepted by the Supreme Court in Natural Resources Allocation, In Re, Special Reference No.1 of 2012 ((2012) 10 SCC 1), in which while distinguishing the judgment in 2G Spectrum Case, it was held in paragraph 129 that there is no constitutional mandate in favour of action under Article 14. The Government has repeatedly deviated from the course of action and the Supreme Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially, whenever the object of policy is anything but revenue maximization, the executive is seen to adopt methods other than auction.

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46. It is of common knowledge that the corporate entities frequently undergoes changes in share-holding patterns. The Company Law permits it, and that the entire corporate world moves on such permissible transactions. The shares of the Company are bought and sold every day on the Stock Exchanges, which may result into change in the control of the management of the Company. The changes, however, do not affect the contracts under which the Company has to transact its business, including the acquisition of assets, licenses, permits, concessions and leases. In case the argument of learned Additional Advocate General is accepted, the change in the share- holding pattern would amount to cancellation of all such contracts, leading to a complete chaos in the corporate world. The entire object of providing limited liability of shareholders under the Companies Act will be affected by such interpretation of law and in such case, the holding Companies, Public Limited Companies and the wholly owned subsidiaries will have to apply for consent and permission in case of change in the share-holding patterns of the Company, affecting their business. We, therefore, reject the submission of learned Additional Advocate General and learned counsel appearing for M/s J.K.Cement Limited that any consequence of the change in the share-holding pattern of the Private Limited Company by which it became a wholly owned subsidiary of Ultra Tech Cement would have required a permission for transfer or that if such proposal was in the making, the change in the personalty of the partnership firm to a Private Limited Company would require previous consent in writing of the competent authority.

47. We entirely agree with the reasons assigned by learned Single Judge that no material has been placed on record to suggest that the transfer of the mining lease from the partnership firm to a Private Limited Company was made with a design to ultimately transfer the shares to Ultra Tech Cement Limited. There is no evidence to suggest any such design or attempt at the time when the application was made for transfer of mining lease by the partnership to the Private Limited Company.

48. We also do not find any case of cheating or fraud in the transfer of mining lease by either the partners of the partnership firm or the Directors of the Private Limited Company, for which the officers of the Mining Department and competent authority could be liable or any criminal action can be taken against them. The competent authority had fully understood and had acted in accordance with the law, on the facts placed before it, in granting consent in writing before transfer of mining lease from the partnership firm to the Private Limited Company. The State Government in its reply in the Writ Petition No.404/2013 had taken a correct stand in defence of the transfer of mining lease. It appears that with the change of Government, the loyalties changed from one business group to another, and the State Government not only initiated action by issuing show cause notice for declaring the permission for transfer to be null and void, but also proposed to take action against its officers for granting permission. The entire action to cancel the lease was actuated with malice in law. An additional affidavit was filed in the writ petition filed by M/s J.K.Cement Limited changing the stand of the Government in triggering action apparently to the benefit of M/s J.K.Cement Limited, instrumental in blocking the expansion of capacity of production of cement by Ultra Tech Cement Limited.

49. Though we find that learned Single Judge has not gone into and recorded any finding on malice in law, the facts placed before us and the arguments advanced clearly indicate that the entire action was coloured with malice in law. The object and purpose of declaring the permission for transfer to be null and void and cancellation of mining lease was for the purpose of restricting the expansion of business activities of Ultra Tech Cement Limited owned by Birla Group of Companies in the State of Rajasthan."

14. When the matter came up for hearing before this Court on 18th September, 2015 following order was passed:

> "In the meantime, the State shall file an affidavit giving details of the circumstances in which normally an application for transfer of mining lease is granted/ rejected. If there is any policy in this regard, the same will be placed on record and if there is no such policy, the State shall mention as to how many applications for transfer of mining lease were granted/rejected in last two years and shall also give the reasons for which they were granted or rejected."

15. Accordingly, an affidavit has been filed by the State of Rajasthan stating that there was no specific policy regarding the granting/rejecting of a transfer of a lease. However, a lease could not be transferred without the consent of the competent authority. In the case of one Shri Abdul Kareem, on death of a lessee, the legal heirs formed a partnership and sought mutation in favour of the partnership firm. It was later learnt that the partners retired and new partners were inducted and on that basis the transfer was declared void.

16. JKCL, respondent No.2, who had also filed independent writ petition before the High Court, has referred to documents which are part of record to submit that in the present case, sale of shares by GLKUPL to UTCL is nothing but sale of the mining lease for consideration of Rs.160 crores. This consideration is reflected in annual report 2012-2013 of the UTCL in the form of investment in

shares of GLKUPL. It has also referred to averments in pleadings/written submissions before the High Court that GLKUPL was incorporated on 26th March, 2012. On 28th March, 2012 application for transfer of lease was made by GLKU. Permission was granted on 25th April, 2012. Transfer deed was executed on 8th August, 2013 but on 23rd July, 2012 itself entire shareholding was transferred to UTCL for Rs.160 crores. Thus, on 8th August, 2013, transferee was UTCL without the consent of the State. This was contrary to rules and standard conditions of transfer. In para 3(iii) of the transfer deed there is a declaration that the transferor has not directly or indirectly been financed. We will refer to these aspects in due course.

17. We have heard learned counsel for the parties at length.

18. As already stated the question for consideration is whether in the given fact situation the transfer of entire shareholding and change of all the directors of a newly formed company to which lease rights were transferred by a declaration that it was mere change of form of partnership business without any transfer for consideration being involved can be taken as unauthorized transfer of lease which could be declared void.

19. Learned counsel for the appellants submitted that the view of the High Court that sale of entire shareholding in favour of UTCL by the newly formed company which had no other assets or business except the mining lease and appointment of nominees of UTCL as Directors of GLKUPL did not amount to change of control of GLKUPL to UTCL or that it was not transfer of mining lease for consideration was clearly erroneous. In view of the fact that transfer of shareholding took place just after the formation of GLKUPL by partnership firm holding the lease on a declaration that no third party was involved nor any direct or indirect consideration was involved, it was clear that formation of GLKUPL itself was a device for transfer of mining lease from GLKU to UTCL for monetary consideration without disclosing the real transaction to the competent authority. The Court was required to see the substance and not mere form. The judgments relied upon only stated the general principle of identity of the company being distinct from shareholders and directors which was subject to the doctrine of piercing the veil to discover the real nature of transaction when it was different from what was apparent. In the present case, it was not a case of mere transfer of shareholding or change of Directors or even a routine merger but use of device to unauthorisedly acquire mining lease by misleading the competent authority by concealing the real transaction. Real transaction is of impermissible sale of the lease which was the only asset of the company. If true facts that lease was to be sold were disclosed, power to permit transfer of lease may not have been exercised. Lease could not be transferred to make profit. Thus, the doctrine of lifting the corporate veil should be invoked. The public power of permitting transfer of lease could not be used to benefit a private operator, who sells its rights in natural resources given to it by the State, in violation of law. Reliance has been placed on Victorian Granites (P) Ltd. vs. P. Rama Rao and Ors.[6]. The High Court did not appreciate the judgment even after noticing it. The controlling power of the lease has completely been transferred for consideration without this fact being brought to the knowledge of the competent authority having jurisdiction to permit and regulate the power to transfer the lease. Law governing relationship between a company and its shareholders inter se has to be applied having regard to reality of a transaction and to effectuate the regulatory provisions dealing with subject. The constitutional principles and the regulatory regime in relation to the mining leases of

minerals which vest in the State cannot be defeated by the abstract doctrine of corporate personality being separate from the entire body of shareholders without having regard to the real nature of transaction and the well known exceptions to this abstract doctrine.

20. Learned counsel for the respondent-writ petitioner supported the view taken by the High Court. He submitted that there was no transfer of lease involved in transfer of entire shareholding and change of directors and in such a situation no permission for transfer was required to be taken. Transaction of sale of shareholding was independent of transfer of lease to the newly formed private limited company without any monetary consideration as was correctly declared. In any case, transfer of lease was permissible and only consideration was payment of dead rent/royalty and compliance of procedural formalities. There was nothing inherently illegal in transfer of a lease. He cited instances of takeover and merger of companies with running business including the cases of Vedanta and BALCO to which we will refer later.

21. We have given thoughtful consideration to the issue arising for consideration.

22. In the present case there are two transactions. Viewed separately, there may be nothing wrong with either or both but if real nature of transaction is seen, the illegality is patent. In first transaction of transfer of lease from the firm to the company, with the permission of the competent authority, only disclosure made while seeking permission for transfer is of transforming partnership business into a private limited company with same partners as directors without there being any financial consideration for the transfer and without there being any third party. There is perhaps nothing wrong in such transfer by itself. In the second transaction, the entire shareholding is transferred for share price and control of mining lease is acquired by the holding company without any apparent price for lease. Technically lease rights are not sold, only shares are sold. No permission for transfer of lease hold rights may be required. Let us now see the combined effect and real substance of the two transactions. The partnership firm holding lease hold rights has successfully transferred the said rights to a third party for consideration in the form of share price which is nothing but price for sale of mining lease which is not allowed and for which no permission has been granted. Thus, if these facts were disclosed to the competent authority, permission for transfer of mining rights for financial consideration could not be allowed. Mining rights belong to the State and not to the lessee and the lessee has no right to profiteer by trading such rights. In fact the lessee has also not claimed such a right. Lessee can either operate the mine or surrender or transfer only with the permission of the authority as legally required. In the present case, the lessee has achieved indirectly what could not be achieved directly by concealing the real nature of the transaction. Is it legally permissible, is the question.

23. The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion[7] but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation[8]. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element

of the public interest, the effect on parties who may be affected etc.[9]

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.........
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> 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.
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> 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 Skiper Construction Company (P) Ltd.[11], it was observed :

> “24. Lifting the corporate veil :
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> 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, up-and-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…………"

28. It is also well settled that mining rights are vested in the State and the lessee is strictly bound by the terms of the lease[12]. Cases of Arun Kumar Agrawal vs. Union of India[13] (the Vedanta case), BALCO Employees' Union vs. Union of India[14] (the BALCO case) and Vodafone International Holdings B.V. versus Union of India[15] cited by learned counsel for the respondent have no application to the present case once real transaction is found to be different from the apparent transactions. In fact, the principle of law laid down in Vodafone case (supra) that the court can look to the real transaction goes against the respondent .

29. In Vedanta case (supra)[16] approval granted by the Government of India for acquisition of majority stake in Cairn Energy Ltd. (CIL) was challenged and a direction was sought for the ONGC to exercise right of pre- emption over shares of CIL. Further challenge was to transfer of ONGC shareholding in CIL to Vedanta, a private company, as being contrary to public interest. This Court held that various commercial and technical aspects have been duly considered by the Government of India and this Court could not sit in judgment over the commercial and business decisions so taken. Reference was also made to earlier decision in BALCO case (supra) laying down that Courts may not ordinarily interfere with economic decisions and wisdom of economic policies of the State in exercise of its power of judicial review. These judgments are in the context of situations where highest public authorities had applied their mind to all the facts in which case the Court was not inclined to interfere. Such is not the position in the present case. No public authority, in the present case, was even conscious that mining lease was being transferred to UTCL and at what price or for

what benefit to the public.

30. In Vodafone case (supra)[17] the dispute arose out of claim by the income tax department to tax capital gain arising out of sale of share capital of a company called CGP by HEL to Vodafone. Question was whether income accrued in India. Negativing the claim of the Revenue, it was held that transaction took place outside territorial jurisdiction of India and was not taxable. This Court observed that "it is the task of the court to ascertain the legal nature of the transaction and while doing so it has to look at the entire transaction as a whole and not to adopt a dissecting approach."[18] In so concluding, the court reconciled the apparent conflicting approach in earlier decisions in Mc. Dowell & Co. vs. Commercial Tax Officer[19] and Union of India vs. Azadi Bachao Andolan[20] with reference to English decisions in IRC vs. Westminister[21] and W.T. Ramsay vs. IRC[22] dealing with the question whether the Court must accept a transaction on face value or not. Thus, while discerning true nature of the entire transaction, court has not to merely see the form of the transaction which is of sale of shares but also the substance which is the private sale of mining rights avoiding legal bar against transfer of sale rights circumventing the mandatory consent of the competent authority. Consent of competent authority is not a formality and transfer without consent is void. The minerals vest in the State and mining lease can be operated strictly within the statutory framework. There is nothing to rebut the allegation that receipt of Rs.160 crores styled as investment in shares is nothing but sale price of the lease. No precedent has been shown permitting such a private sale of a mining lease for consideration without any corresponding benefit to the public.

31. In the recent past, there have been serious allegations of illegalities and deficiencies in the regulatory regime of mining leases. As noted by this Court in Goa Foundation (supra), the Government of India appointed a former Judge of this Court, Justice M.B. Shah to go into various aspects of illegal mining, including grant and transfer of leases. It is a matter of public knowledge that in the wake of reports submitted by Justice Shah, the policy framework and statutory provisions have undergone changes at various levels. Changes suggested include the mode and manner of grant and renewal of lease rights. A facet of this aspect has been gone into by us in our order dated 04th January, 2016 in Civil Appeal Nos. 4845- 4846 of 2015 titled Sulekhan Singh & Co. vs. State of U.P. Since, the mining rights vest in the State, the State has to regulate transfer of such rights in the best interest of the people. No lessee can trade mining rights by adopting a device of forming a private limited company and transfer of entire shareholding only with a view to sell the mining rights for private profit as has happened in the present case. We may note that under Section 12A(6) added by the Mines and Minerals (Development and Regulation) Amendment Act, 2015, it has been provided that transfer of mineral concessions can be allowed only if such concessions are granted through auction.

32. In these circumstances, the plea of the writ petitioner that the lessee has a vested right to transfer the lease subject merely to compliance of formalities cannot be accepted as correct. The submission is contrary to scheme of law. As already observed mining rights vest in State and are regulated consistent with the doctrine of public trust. The rules prohibit transfer of mining lease for consideration without the previous consent of competent authority in writing[23]. The original lessee gave declaration while seeking transfer, that no consideration was received which though

apparently correct was actually false as the subsequent transaction of sale of shares was integral part of the first transaction of transfer of lease to private company which soon thereafter became subsidiary of another company. The said real transaction cannot be ignored to find out the substance.

33. Thus, acquisition of mining lease contrary to rules is void. Requirement of previous consent cannot be ignored nor taken to be formality subject only to pay dead rent or agreeing to follow same terms. The lessee privately and unauthorisedly cannot sell its rights for consideration and profiteer from rights which belong to State. There is no warrant for any contrary assumption. The State has to exercise its power of granting or refusing permission for transfer of lease in a fair and reasonable manner but following doctrine of public trust. This Court has held that the State cannot overlook illegal transfers[24].

34. The State must have a declared policy for exercise of its power of permitting or refusing transfer of mining leases and such policy should be operated in a transparent manner. However, even in absence of a policy and irrespective of exercise of power in the past, transfer of lease for private benefit without corresponding benefit to the public or the State exchequer is not permitted. After all, minerals vest in the State and the State has to exercise its power to deal with them as per doctrine of public trust. Thus, in the present case, the State was certainly entitled to exercise its jurisdiction to cancel lease transferred in violation of rules.

35. As already seen, in the present case, the original lessee sought transfer merely by disclosing that the partnership firm was to be transformed into a private limited company with the same partners continuing as directors and there was no direct or indirect consideration involved. It was specifically declared that no pecuniary advantage was being taken in the process which is clearly false. The permission to transfer the lease in favour of a private limited company was granted on that basis. Thus, it was a case of suppression veri and suggestio falsi. Once it is held that transfer of lease is not permissible without permission of the competent authority, the competent authority was entitled to have full disclosure of facts for taking a decision in the matter so that a private person does not benefit at the expense of public property. The original lessee did not disclose that the real purpose was not merely to change its partnership business into a private limited company as claimed but to privately transfer the lease by sale to a third party. This aspect has also escaped the attention of the High Court. Accordingly, our answer to the question framed is that in the facts of the present case, sale of shareholding by GLKUPL to UTCL is a private unauthorized sale of mining lease which being in violation of rules is void. GLKUPL has been formed merely as a device to avoid the legal requirement for transfer of mining lease and to facilitate private benefit to the parties to the transaction, to the detriment of the public.

36. Learned single Judge and the Division Bench have gone by only one aspect of law, i.e. the general principle that sale of shares by itself is not sale of assets but this principle is subject to the doctrine of piercing of corporate veil wherever necessary to give effect to the policy of law. In the present case, this principle clearly applies as transfer of shares to cover up the real transaction which is sale of mining lease for consideration without the previous consent of competent authority, as statutorily required. The statutory requirement is sought to be overcome with the plea that it was

a transaction merely of transfer of shareholding when on the face of it the transaction is clearly that of sale of the mining lease. In view of the above, the view taken by the High Court cannot be sustained.

37. Accordingly, this appeal is allowed and the judgment of the High Court is set aside. We, however, direct the State of Rajasthan to frame and notify its policy in the matter wit hin one month from the receipt of a copy of this order. The State of Rajasthan may within one month thereafter pass an appropriate order in respect of the mining lease in question in the light of the policy so framed. Till such a decision is taken, status quo may be maintained.

……..……………………………J. [ANIL R. DAVE] ………………………………….J. [ADARSH KUMAR GOEL] NEW DELHI JANUARY 20, 2016

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[1]    AIR 1955 SC 74
[2]    (1969) 1 SCC 765
[3]    (1999) 4 SCC 458
[4]    (2005) 7 SCC 393
[5]    (2014) 9 SCC 407
[6]    (1996) 10 SCC 665
[7]    (1967) 1 SCR 934 – The Commissioner of Income Tax, Madras vs. Sri
Meenakshi Mills Ltd.
[8]    (1985) 4 SCC 114 – Workmen Employed in Associated Rubber Industry
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Ltd., Bhavnagar vs. Associated Rubber Industry Ltd., Bhavnagar [9] (1986) 1 SCC 264 (LIC vs. Escorts Ltd.) which refers to Palmer's Company Law (23rd Ed.) and Pennington Company Law (4th Ed.) followed in New Horizons Ltd. vs. UOI (1995) 1 SCC 478 [10] (1988) 4 SCC 59 [11] (1996) 4 SCC 622 [12] (2013) 6 SCC 476 (Orissa Mining Corpn. Ltd. vs. Ministry of Environment and Forest) – Para 58; (1981) 2 SCC 205 (State of Tamil Nadu vs. M/s Hind Stone) – Para 37; (2012) 11 SCC 1 (Monnet Ispat & Energy Ltd. vs. Union of India) – Para 41; (1976) 4 SCC 108 (Amritlal Nathubhai Shah vs. Union Govt. of India); (2013) 7 SCC 571 (Geomin Minerals & Marketing Ltd. vs. State of Orissa) [13] (2013) 7 SCC 1 [14] (2002) 2 SCC 333 [15] (2012) 6 SCC 613 [16] (2013) 7 SCC 1 – Para 1 [17] (2012) 6 SCC 613 – Para 179 [18] Para 64 [19] (1985) 3 SCC 230 [20] (2004) 10 SCC 1 [21] 1936 AC 1 [22] 1982 AC 300 [23] "R.15. Transfer of Mining Lease.- (1) The lessee shall not without the previous consent in writing of the competent authority-

(a) assign, sublet, mortgage or in any other manner transfer the mining lease or any right, title or interest therein, or

(b) enter into or make any arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by any person or body of person other than lessee.

Provided that the lessee of masonary stone may, with the prior permission of concerned ME/AME and subject to such conditions as he may specify therein, allow any Government contractor to install and operate stone gitti crusher till the completion of construction work.

Provided further that such permission shall be given by ME/AME after obtaining registered consent of the lessee and also on the condition that the crusher owner shall use masonary stone produced from the concerned lease area only.

Provided also that wherever required, permission of Revenue and other Departments may also be taken before issuing such permission. (1A) Every application for transfer of Mining Lease shall be accompanied by a fee of [Rs.5000/- for Marble, Sand Stone & granite and Rs. 2000/- for other minerals] and shall be submitted to the Mining Engineer / Assistant Mining Engineer. (1AA) The Government may subject to the condition specified in rule 11(2) transfer whole area of the lease to a person on payment to the Government transfer premium [equal to existing dead rent;] Provided that the lease has remained in force for at least two years from the date of grant.

Provided further that such transfer shall not be made if there are any dues outstanding against the transferor or transferee.

Provided further also that where the mortgagee is a State Institution or a bank or a State corporation, it shall not be necessary for the lessee to obtain the previous consent of the competent authority or previous sanction of the State Government. However, the lessee shall inform the competent authority about any mortgage in favour of any State institution, Bank or State Corporation within a period of 3 months from the date of mortgage or assignment.

(2) An application for transfer of mining lease 17 shall be disposed of by competent authority:[xxx] Provided that transfer of mining lease, granted to the category of persons mentioned in sub-rule (3) of rule 7 shall be made only to a person belonging to any of the categories mentioned in the clause of the said sub- rule.

(3) Transfer of mining lease shall not be considered as a matter of right and the Government may refuse for such transfer for the reasons to be recorded and communicated in writing to the lessee.

(4) Where on an application for transfer of mining lease under this rule the competent authority has given consent for such lease, a transfer lease deed in Form No.15 or a form as near thereto as possible, shall be executed within three months of the date of the consent, or within such period as the competent authority may allow in this behalf." "R.72. Mining operations to be under lease or licence.- No mining lease, quarry license, shortterm-permit or any other permit shall be granted otherwise than in accordance with the provisions of these rules and if granted shall be deemed to be null and void." [24] (2014) 6 SCC 590 (Goa Foundation vs. Union of India) – Para 60