

Original Paper

On the Legal Person Personality Denial System

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Abstract

Company personality independence and shareholders limited liability is the basic principles of the company law, legal person personality denial system is the company personality independence and shareholders limited liability exceptions, legal person personality denial system stipulates the abuse of company legal person independent status and shareholders limited liability shareholders bear joint and several liability for the company's debt, the responsibility of the system does not involve the actual control of the company. But in reality, no matter what the size or nature of the company, the emergence of the actual controllers is always inevitable and commonplace. The actual controller of the company is not a shareholder of the company in small and medium-sized enterprises, but they often use their dominant position to abuse the independent status of the company and infringe the interests of creditors. Usually, the practice is to control the company through other shareholders in the form of capital contribution or manipulate the company in other ways. In view of the prominent problem that the actual controller abusing the independent status of legal person infringes on the interests of creditors in practice, it is necessary to summarize the judicial practice experience to strengthen the responsibility of the actual controller. Whether the legal personality denial system as the basis of the judgment is applicable to the actual controller is worth thinking and studying.

Keywords

legal personality denial, actual controller, limited liability

1. Foreword

In the process of promoting economic growth, there are also some irrationality and some loopholes. When western countries are looking for various ways and methods to solve the problem, the United States first put forward the corporate personality denial system, after then, Britain, Germany, Japan and other countries have followed suit. However, if the system is maliciously applied, it will cause harm to the legal person system, so it should be very lotus price when applicable.

In 2005, China issued a new “Company Law”, in which the corporate personality denial system was formally established. After the introduction of the new law, the establishment of the system, and how to standardize the application of the system in practice has become a new focus. Due to the lack of operability of the system norms, it leads to the abuse of the system in the process of law enforcement and destroys the independent personality of the company. Therefore, the author discusses the success and inadequacy of the application of the corporate personality denial system in Chinese practice, and puts forward some suggestions in order to help the application of the system.

2. The Importance of Legal Personality Independence and Limited Liability

The company becomes one of the most important forms of economic organization in the world today because it has independent legal personality and limited liability of shareholders. The independence of legal person personality is the premise and foundation of the company as the civil subject, and the legal person personality denial system is the inevitable result of the development of modern corporate system. The basic content of independent corporate personality includes two aspects: one is that the company has independent personality, enjoys civil rights, and can independently bear civil liabilities and obligations; on the other hand, the subject qualification of the company is independent of the shareholders of the company, and the company and the shareholders of the company are independent of the other party.

In the process of the development of market economy, some shareholders make excessive use of the independent legal person status of the company to avoid debts, thus damaging the rights and interests of other shareholders, legal persons or trading counterparts. The corporate personality denial system is to regulate these violations. The deprivation of the company’s legal person qualification refers to the part of the specific legal relationship under specific circumstances, no longer admit the company’s legal person status and shareholders to limited liability, is not a comprehensive negative legal person personality, to prevent the abuse of legal person personality independence, ultimately protect the interests of the creditors and public interests, the investor is responsible for the interests of the company’s relative or public interests, so as to achieve the final justice. It can be seen that the fundamental purpose of the corporate personality denial system is to maintain the value of the principle of integrity by protecting the interests of creditors, reflect the fairness and justice of the law, create a favorable environmental market for the whole capital, and make the improvement and development of the legal system.

3. The Applicable Conditions of the Corporate Personality Denial System

As the modification and maintenance of the limited liability of the shareholders under specific circumstances, it is the balance between the risks and the rights of the company, the shareholders and the creditors, and realizes the “fairness of correction”. The corporate personality denial system needs to meet certain conditions before its use, otherwise the system cannot be applied. In summary, the

application conditions for corporate personality denial are mainly divided into but not limited to the following five aspects, specifically: First, the establishment of the company is legal and effective, with independent personality. The legal person personality denial system can only be applied to the independent personality, and the applicable subject can only be the shareholders of the personality of the company and the limited liability, and the rights and interests of the shareholders, namely, the behavior requirements of the company must conform to the legal person status of the company. Although corporate personality is denied in judicial practice, the abuse of corporate personality is common. The behaviors mainly include the following three categories: (1) Use of legal personality to evade contractual obligations; (2) use of legal personality to evade legal obligations; (3) personality confusion, including property management, business scope, personnel structure, etc. If the behavior of the company does not conform to the requirement, the corporate personality denial cannot be applied; fourth, the result requirement, that is, the abuse of the corporate personality objectively causes the damage and causes the loss to the company or a third party, then the personality denial cannot be claimed; fifth, the creditors of the company must exhaust other relief means before applying the system. The independent personality of the legal person and the limited liability of shareholders are the two cornerstones of the modern corporate system. The independent personality of the company cannot be easily denied. When other means are used to achieve the goal, the personality denial system should be adopted to deny the personality of the company, so as to directly claim the shareholder responsibility. According to the relevant provisions of the Company Law, only the shareholders who abuse the independent status of the company legal person and the limited liability of shareholders and infringe the legal interests of creditors shall be jointly and severally liable for the debts of the company, and other shareholders shall not be liable for this. The above provisions follow the general imputation principle of tort liability, that is, only the shareholders (active shareholders) who implement the tort shall bear the liability, and the creditors shall not claim joint and several liability to the negative shareholders who have not implement the abuse of rights. However, the relevant provisions of the Company Law are very abstract, and there are still some disputes over the specific liability subjects of the legal person personality denial system in judicial practice. Whether some special subjects should bear joint and several liability is still needed. The following four subjects: the affiliated companies, the original shareholders, the hidden shareholders and the actual controller are discussed respectively.

4. The Deficiency and Perfection of the Legal Person Personality Denial System

Although the establishment of the legal person personality denial system has maintained the socialist market economy and maintained the stability and order of the society, there are also some deficiencies for us to improve, which are as follows:

4.1 On the Burden of Proof

According to the principle of “who claims who provides evidence” in the civil procedure law, when the creditor asks the company to the company that the shareholders abuse the legal personality, the

counterpart of the transaction shall provide evidence to prove that the shareholders of the company really carried out such behavior. In practice, because the company has the characteristics of independent personality, the creditors cannot inquire the abuse of the rights and the independent personality of the company shareholders through the external company behavior. If the principle of proof is simply applied to the cases in which the legal personality denial system can be used, it is very detrimental to the creditors. Even if creditors pay great time and energy to query the specific situation, because involves the company's business secrets and autonomy, creditors can not check all the company management behavior, also cannot get in the corporate personality abuse of other behavior, if simple requirements creditors must obtain the above proof, so the distribution of the burden of proof is obviously unfair. The Provisions of the Supreme People's Court on Some Evidence in Civil Procedure specify eight cases of the inversion of the burden of proof, but they do not include the rules of the distribution of the burden of proof of the legal person personality denial system. In some new cases and reasons, it is still necessary to discuss the rules of the inversion of the burden of proof.

In practice, in cases that may apply the principle of legal personality denial, the creditors mostly lose because they cannot prove that the case has the behavior that can use the principle. In such cases, especially in the affiliated companies, it is more necessary to prove the high degree of consistency of personnel, trading goods, business places and so on, so that the court will recognize the abuse of personality. In the case of shareholders' abuse of independent legal personality, the principle of inverted burden of proof should also be used. Specific to the case transaction counterpart need to prove that the subject of the subject, the specific circumstances of industrial and commercial registration, capital is paid enough, and so on and so forth, and about the company's operating situation, staffing, financial separate settlement and whether the company books without incomplete and error, the best application of the burden of proof inversion principle. The burden of proof inversion principle, of course, is absolutely not involved all the burden of proof transferred to one party, it just put some more special cases exist some cases of proof obligation of inversion, either to protect the rights and interests of creditors, or for evidence, the obligation of the burden of proof is closer to one party. Therefore, even if the principle of inversion of the burden of proof is used, the application of this principle must be careful and cautious. If the use is not restricted cautiously, it is very likely to bring about the improper use of the principle of inversion of the burden of proof by creditors. If the transaction counterpart does not bear the burden of proof for the facts of all the cases involved in the case, it will bring unlimited improper use of the right of action, which is not convenient to settle disputes, and may bring uncontrolled litigation, and then bring the waste of litigation resources.

4.2 About the Litigation Subject in the Company's Legal Person Personality Denial System

According to the Company Law, in the name of the company to conduct serious illegal acts, such as endangering national security and public interests, the business license should be revoked. The fundamental purpose of the company law includes safeguarding the social public interest, but the current law only makes the framework expression of the company's social responsibility, and does not

make the relevant implementation provisions. The law should further clarify the category of the interest subject, and also take the interested party as the subject. As long as it can prove that the company's abuse of legal person personality and its rights and interests are infringed, it can file a lawsuit to require the company and the investor to bear the legal consequences and give full play to the purpose of the company law to safeguard the social public interests. Only by effectively protecting the legitimate rights and interests of interested parties, can the advocacy provisions of the company law become an operational legal standard and better realize the legislative purpose of the company law.

5. Whether the Actual Controller is Applicable to the Legal Person Personality Denial Problem

About the actual control is in accordance with the application of legal person personality denied, there are mainly two views: a view that the company law denies the liability of the personality qualification for the shareholders, because the negative legal personality system is originally after exhaust other means, to protect the interests of the company creditors "last option", itself should be carefully, therefore, should not do the applicable responsibility subject to expand interpretation. Another view is that in practice there are a lot of actual controller abuse of rights, embodied by the actual controller through indirect ownership, through the way of agreement arrangement, through the voting rights of kinship even through the excessive control and control, and complete various interests damage the interests of creditors, therefore, the actual controllers into the scope of personality denial system of the abuse of rights cause the company cannot pay the creditor's rights, shall bear joint and several liability. Students agree with the second point of view, because the legal person personality denied that the subject should be according to the actual situation, the company law will responsibility for the company shareholders, mainly consider the company behavior, can use shareholder rights and company limited liability infringes on the legitimate interests of creditors. The actual controller also has a greater right to intervene in the company, and can abuse his rights like the shareholders of the company and use his tort liability to avoid the limited liability of the company. Similarly, in order to protect the interests of creditors, if the actual controller of the company over controls and controls the company and makes the company an empty shell or tool through various related transactions, causing the company cannot pay the creditor's rights, it shall be liable for compensation due to its infringement.

6. Epilogue

In order to prevent shareholders from using the independent status of legal person and damaging the interests of creditors of the company with limited liability, the third paragraph of Article 20 of the Company Law first stipulates the legal person personality denial system, which aims to achieve a reasonable balance between the interests of shareholders and the interests of creditors. The legal person personality denial system does not deny the legal person personality of the company, but only breaks through the limited liability of shareholders under specific circumstances, which is a perfect supplement to the company's legal person system. However, the Company Law only abstracts

stipulates that the legal person personality denial system is applicable to the shareholders of the company, and the specific liability subject is not clear. For example, there is still the dispute whether the original shareholders, hidden shareholders and non-actual shareholders of the company can apply the legal person personality denial system. Students believe that the responsibility subject of the legal person personality system should be based on reality, not only understood as shareholders in the registration of the company, so the actual liability subject is too narrow and cannot fully protect the legitimate interests of creditors. Affiliated companies, original shareholders, hidden shareholders, actual controllers and other subjects should be the responsibility subjects of the legal person personality denial system, so as to realize the purpose and value of the legal person personality denial system to promote social and economic fairness.

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