Page: 800-827

URL: www.lijdlr.com

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 4 | Issue 3

2026

DOI: https://doi.org/10.70183/lijdlr.2026.v04.295

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BEYOND THE CORPORATE VEIL: REASSESSING DIRECTOR AND KEY MANAGERIAL PERSONNEL LIABILITY FOR CORPORATE MISCONDUCT IN INDIA

Harsh Raj[1]

I. ABSTRACT

Indian company law imposes liability on directors and key managerial personnel through at least four distinct doctrinal routes, each resting on a different theory of culpability and each triggered by a different statute. The Companies Act, 2013 attaches civil and quasi-criminal consequences to the "officer who is in default", a status that can arise from formal designation almost independently of actual involvement in wrongdoing. The general criminal law, following the Supreme Court's decisions in Iridium India Telecom Ltd. v. Motorola Inc. and Sunil Bharti Mittal v. CBI, instead requires proof of personal mens rea or an express statutory fiction before a director may be arraigned alongside the company. The Negotiable Instruments Act, 1881 imposes a distinct form of statutory vicarious liability on persons who were "in charge of and responsible for" the conduct of business at the material time, while the Insolvency and Bankruptcy Code, 2016 fastens personal liability on directors who continued trading with knowledge that insolvency could not reasonably be avoided. This paper argues that the coexistence of these four models, rather than reflecting a considered legislative theory of managerial responsibility, has produced a fragmented and forum-dependent liability regime in which the same director, on materially identical facts, may face entirely different thresholds of culpability depending on which regulator or complainant elects to proceed and under which statute. The paper further argues that the statutory safe harbour available to independent directors under Section 149(12) of the Companies Act, 2013, though textually precise, is being narrowed in regulatory and tribunal practice through an expansive treatment of constructive knowledge that risks converting board membership itself into evidence of complicity. Drawing on the doctrinal architecture developed across the Companies Act, the Negotiable Instruments Act, the Insolvency and Bankruptcy Code, and the general criminal law, the paper proposes a

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functional and graduated standard of liability keyed to a person's actual proximity to the impugned decision rather than to formal designation and recommends statutory and procedural reforms to bring India's fragmented liability regime closer to a coherent theory of corporate governance responsibility.

II. KEYWORDS

Director Liability; Corporate Veil; Officer in Default; Independent Directors; Corporate Governance.

III. INTRODUCTION AND RESEARCH PROBLEM

A registered company occupies, in law, a position independent of the individuals who own, manage, or direct it. This proposition, settled since the House of Lords' decision in *Salomon v. A. Salomon & Co. Ltd.*[2], underwrites the entire architecture of modern company law: it allows capital to be pooled, risk to be bounded, and enterprise to be organised at a scale that unlimited personal liability would never permit. Indian courts have never doubted the proposition, and the Supreme Court has repeatedly affirmed that a company's separate personality is not a fiction to be discarded lightly.

Yet the same courts have equally recognised, from an early stage, that the corporate form can be turned into an instrument of concealment, and that in defined circumstances the veil separating the company from those who direct it may be lifted. In *Life Insurance Corporation of India v. Escorts Ltd.*[3], the Supreme Court held that the corporate veil may be pierced where a statute expressly permits it, where the corporate form is used to evade a legal obligation or to perpetrate fraud, or where associated companies are so intertwined that they function, in substance, as a single concern; the Court declined to reduce the doctrine to a closed list, holding instead that its application must turn on the statute in question, the object sought to be achieved, and the conduct of the parties.

The same discretionary, fact-sensitive approach appears in *State of Uttar Pradesh v. Renusagar Power Co.*[4], where the Court treated a wholly owned power-generating

[2]Salomon v. A. Salomon & Co. Ltd., [1897] AC 22 (HL).
[3]Life Insurance Corporation of India v. Escorts Ltd., (1986) 1 SCC 264.
[4]State of Uttar Pradesh v. Renusagar Power Co., (1988) 4 SCC 59.

subsidiary as inseparable from its parent for the purpose of a taxing statute, and in the tax context in *Vodafone International Holdings B.V. v. Union of India*[5], where the Court accepted that the veil could, in principle, be lifted to look through a holding structure shown to be a sham, while declining to do so on the facts before it.

This body of doctrine, however, answers a narrower question than the one that dominates contemporary Indian corporate practice. Veil-piercing, properly understood, is a remedy directed at the company's separate personality it asks whether the law should, for a specific purpose, treat the company and the person behind it as one. It says comparatively little about the much more frequently litigated question of when a director, or key managerial personnel ("KMP"), can be made personally answerable for misconduct connected with the company's affairs without any need to dissolve the company's separate identity at all.

In current Indian practice, the overwhelming majority of proceedings against directors and KMPs proceed on precisely this second footing: the company remains a distinct legal person, untouched, while the individual is pursued directly under a specific statutory provision that creates liability in its own right. Four such tracks dominate the field. The Companies Act, 2013 creates civil and quasi-criminal liability for any "officer who is in default"[6], a status defined with reference to formal office rather than to proven wrongdoing.

The general criminal law, as clarified in *Iridium India Telecom Ltd. v. Motorola Inc.*[7] and *Sunil Bharti Mittal v. Central Bureau of Investigation*[8], instead insists on personal mens rea or an explicit statutory fiction before a director can be arraigned alongside the company. The Negotiable Instruments Act, 1881 creates a third, freestanding species of vicarious liability, attaching to persons "in charge of and responsible for" the conduct of business at the time a cheque is dishonoured.[9] And the Insolvency and Bankruptcy Code, 2016 creates a fourth model altogether, fastening personal

[5]Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613.
[6]Companies Act, 2013, s. 2(60).
[7]Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74.
[8]Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609.
[9]Negotiable Instruments Act, 1881, s. 141.

contribution liability on directors who continued trading with knowledge that insolvency could not reasonably be averted.[10]

The research problem this paper addresses are that these four tracks are not, in any meaningful sense, calibrated to one another. Each has its own trigger, its own standard of proof, its own defences, and its own procedural gateway, and each has developed largely in isolation — NI Act jurisprudence citing NI Act precedent, IBC jurisprudence citing IBC precedent, with only occasional cross-reference to the general criminal law's attribution doctrine. The result is a regime in which the answer to the question "is this director personally liable?" depends less on what the director actually did than on which statute, and which forum, a complainant or regulator chooses to invoke.

A promoter-director who exercises real, informal control over a company's affairs may escape the Companies Act's officer-in-default provisions simply because a more junior colleague was formally assigned compliance responsibility, while a genuinely uninvolved independent director may be dragged into NI Act proceedings on the strength of boilerplate averments that Indian courts have, for two decades, tried and largely failed to filter out at the threshold. This paper examines each of the four tracks in turn, tests the strength of the safe harbour Parliament has built for independent directors, and asks whether a more functionally coherent standard of liability is available.

A. Research Objectives

1. To map the distinct statutory and judicial doctrines that govern director and KMP liability in India, and to identify the theory of culpability underlying each.
2. To examine whether the "officer in default" framework under the Companies Act, 2013 and the vicarious liability framework under the Negotiable Instruments Act, 1881 are doctrinally consistent with the mens rea and attribution framework applied under the general criminal law.

[10]Insolvency and Bankruptcy Code, 2016, s. 66.

3. To assess whether the safe harbour available to independent directors under Section 149(12) of the Companies Act, 2013 functions as an effective shield in actual enforcement and adjudicatory practice, or whether it has been narrowed in application.
4. To evaluate the fraudulent and wrongful trading regime under Section 66 of the Insolvency and Bankruptcy Code, 2016 as a distinct, insolvency-specific model of director liability, and to compare its structure with the officer-in-default model.
5. To propose a functionally graduated standard for director and KMP liability capable of being harmonised across these statutory tracks.

B. Research Questions

1. Does Indian law apply a single, coherent theory of managerial culpability to directors and KMPs, or do inconsistent statutory standards produce outcomes that depend on the forum and statute chosen rather than on the underlying conduct?
2. To what extent does formal designation as director, KMP, or "officer in default" diverge from functional control in determining liability outcomes in practice?
3. Does the Section 149(12) safe harbour for independent directors provide meaningful protection, or has enforcement and tribunal practice eroded it into a largely illusory defence?
4. How does the fraudulent and wrongful trading regime under Section 66 of the Insolvency and Bankruptcy Code, 2016 interact with, and differ from, the general criminal law's standard of attribution?
5. What statutory or procedural reforms would produce a more internally consistent regime of director and KMP liability in India?

C. Research Hypotheses

1. The absence of a unified statutory definition of managerial culpability across the Companies Act, 2013, the Negotiable Instruments Act, 1881, the

Insolvency and Bankruptcy Code, 2016, and the general criminal law has produced inconsistent liability outcomes for functionally similar conduct.

2. Formal designation directorship or KMP status is increasingly used as a proxy for functional control, resulting in the over-inclusion of independent and non-executive directors within the net of liability and the simultaneous under-inclusion of persons, such as promoters and de facto controllers, who exercise informal control without holding formal office.

3. The Section 149(12) safe harbour, despite its textual precision, is being narrowed in adjudicatory and enforcement practice through an expansive reading of "knowledge" and "board processes" that treats attendance and access to board papers as constructive proof of complicity.

4. The Section 66 IBC standard being conduct-specific, time-bound to the period preceding the onset of insolvency and coupled with an objective due diligence defence offers a more calibrated model of managerial culpability than the officer-in-default framework and could usefully inform the reform of the latter.

D. Research Methodology

This paper adopts a doctrinal, black-letter methodology. The primary sources examined are the Constitution of India, the Companies Act, 2013, the Negotiable Instruments Act, 1881, and the Insolvency and Bankruptcy Code, 2016 as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, together with the decisions of the Supreme Court of India, the National Company Law Appellate Tribunal ("NCLAT"), and the National Company Law Tribunal ("NCLT") that have interpreted these provisions. Secondary sources include peer-reviewed law journal articles, law firm client updates, and reported enforcement orders discussed in contemporaneous legal commentary, used principally to establish how the foundational doctrines identified in Supreme Court judgments have been applied — and in some instances qualified in more recent tribunal practice through 2025 and 2026.

Case law has been selected through a doctrinal-tracing method: each of the four liability tracks identified in this paper is traced from its foundational Constitution Bench or three-judge bench authority down through its most recent reported application, in order to test whether the standard originally laid down continues to hold in current practice or has drifted in application.

Comparative material is used sparingly and only as interpretive background for instance, the English wrongful trading provision under Section 214 of the UK Insolvency Act, 1986, is noted only insofar as it informed the drafting of Section 66 of the Insolvency and Bankruptcy Code, 2016; this paper does not purport to be a comparative study. Where a claim in the existing literature could not be corroborated against a primary source or a reliable secondary account, it has been omitted rather than included on the strength of assumption.

E. Literature Review

Existing scholarship on director and KMP liability in India is extensive but, this paper suggests, largely siloed within individual statutes rather than organised around the underlying question of managerial culpability as such. Writing on the corporate veil doctrine tends to treat *LIC v. Escorts* and *Renusagar* as establishing an open-ended, discretionary jurisdiction to disregard corporate separateness, with commentators repeatedly observing that the Supreme Court has declined to reduce the doctrine to a fixed set of categories and has instead left its boundaries to be worked out case by case.

This literature is valuable in mapping out the outer boundary of corporate separateness, but it says little about the statute-specific liability regimes that, in practice, account for the great majority of proceedings against individual directors.

A second and much larger body of writing addresses vicarious liability under Section 141 of the Negotiable Instruments Act, 1881. This literature traces a fairly settled doctrinal lineage: the three-judge bench in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*[11] held that a complaint must specifically aver that the accused was, at the material time, in charge of and responsible for the conduct of the company's business, and that a bare

[11]S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.

designation as director does not by itself satisfy this requirement; *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal*[12] and *K.K. Ahuja v. V.K. Vora*[13] refined the pleading standard further, and *Gunmala Sales Pvt. Ltd. v. Anu Mehta*[14] attempted a comprehensive synthesis of the preceding decisions.

Commentary in this space consistently identifies a practical tension that the case law itself has not resolved: complainants have learned to track the statutory language of Section 141 in their pleadings almost verbatim, so that the "specific averment" requirement, intended as a substantive filter, risks operating as a drafting formality that any competent complainant can satisfy regardless of the director's actual role. *Pooja Ravinder Devidasani v. State of Maharashtra*[15] is regularly cited as the clearest judicial recognition of this problem in the specific context of non-executive directors, holding that a non-executive director, being a custodian of governance rather than a participant in day-to-day management, cannot be fastened with liability merely by virtue of holding office.

A third strand of literature addresses corporate criminal liability and the doctrine of attribution. Commentators on *Iridium India Telecom Ltd. v. Motorola Inc.* have noted that the Supreme Court's adoption of an "alter ego" test for imputing mens rea to a corporation tracks the English "directing mind and will" approach associated with *Tesco Supermarkets Ltd. v. Nattrass*, and several writers have argued that Indian courts have not meaningfully engaged with the more flexible, context-sensitive alternative associated with *Meridian Global Funds Management Asia Ltd. v. Securities Commission*. This literature also traces how *Sunil Bharti Mittal v. CBI* clarified that the attribution doctrine cannot be reversed to impute a company's criminal intent to its directors merely because they occupy senior office, absent either direct evidence of personal involvement or an express statutory fiction.

A fourth and more recent strand concerns independent directors specifically. Scholarship from the National Law Institute University's Centre for Business and

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[12]National Small Industries Corp. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330.
[13]K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48.
[14]Gunmala Sales Pvt. Ltd. v. Anu Mehta, (2015) 1 SCC 103.
[15]Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1.

Commercial Laws has argued that Section 149(12) has not always been read as its text requires: the sub-section joins its two principal triggers knowledge attributable through board processes, and failure to act diligently with the word “or”, implying that either is independently sufficient to establish liability, yet enforcement practice has tended to treat proof of knowledge as a threshold precondition before diligence is even examined, a reading that this literature terms the “forgotten diligence test”.

Finally, writing on the Insolvency and Bankruptcy Code has focused heavily on the absence of any statutory look-back period for fraudulent trading claims under Section 66, and, more recently, on the Supreme Court's clarification in *Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd.*[16] that Section 66 proceedings are conceptually distinct from avoidance proceedings under Sections 43, 45, and 50 of the Code, and must not be conflated with them. What is largely missing from this body of work, and what this paper attempts to supply, is a cross-statutory synthesis: an account of how these four tracks sit alongside one another, and of what a director actually experiences when the same underlying conduct is capable of being pursued through any of them.

IV. RESEARCH AND ANALYSIS

A. The Separate Legal Personality Baseline and the Narrow Compass of Veil-Piercing

It is necessary to begin by fixing the outer boundary of the veil-piercing doctrine, precisely because so much loose discussion of director liability invokes the language of “lifting the veil” for problems the doctrine was never built to solve. Veil-piercing asks whether, for a specific and usually narrow purpose, the law should disregard the separateness of the company and treat it as identical with a shareholder or a related entity. *LIC v. Escorts* identifies four situations in which this may occur express statutory authorisation, evasion of an existing legal obligation, fraud, and the intimate association of related companies functioning as a single concern while expressly refusing to treat this as an exhaustive list. *Renusagar* applied the doctrine to treat a captive power subsidiary and its parent as one for the purpose of a state electricity

[16]Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd., (2025) ibclaw.in 120 SC.

duty exemption, on the basis that the two were "inextricably linked together." *Vodafone* confirms that the veil can, in an appropriate case, be lifted even in the tax context to look through a corporate structure shown to be a device for avoidance, while cautioning that legitimate tax planning through validly incorporated structures is not, without more, a ground for doing so.

What unites these cases is that each concerns the company's own separate personality whether the corporate form itself should be disregarded for a particular statutory or equitable purpose. None of them supply a general theory of when a director, as an individual, becomes personally answerable for what the company did. That question, as the following sub-sections show, is instead answered by provisions that operate entirely independently of veil-piercing: the company's separate personality is left wholly intact, and liability attaches to the individual director or KMP directly, by force of a specific statutory text. The persistence of veil-piercing vocabulary in popular and even some academic discussion of director liability is, this paper suggests, a source of some of the doctrinal confusion identified in this analysis: it invites the assumption that a single, unified equitable doctrine governs the field, when in truth at least four independent statutory architectures do the work.

B. The "Officer in Default" Model under the Companies Act, 2013

The Companies Act, 2013 defines an "officer" expansively to include any director, manager, or key managerial personnel, as well as any person in accordance with whose directions or instructions the board is accustomed to act[17]. Section 2(60) then defines the narrower and operationally more important category of "officer who is in default", being the person or persons who bear liability wherever a specific provision of the Act penalises an "officer in default". This category includes, among others, whole-time directors, KMPs, and in their absence any director specified by the board with that director's written consent, or, failing such specification, every director of the company[18]. It also extends to any person charged by the board with responsibility for

[17]Companies Act, 2013, s. 2(59).
[18]Companies Act, 2013, s. 2(60)(i)–(iii).

compliance in a particular area, and to any director who was aware of a contravention through participation in board proceedings without objecting to it.[19]

The structural feature that distinguishes this model from the other three examined in this paper is that it is built around formal office and formal allocation of responsibility rather than around proof of actual wrongdoing. A company may designate a specific officer to be responsible for a defined set of compliance obligations, and that officer then becomes the officer in default for those obligations "in exclusion of all other persons" otherwise falling within Section 2(60).

This is a sensible compliance-management tool for well-governed companies. Still, it also means that formal internal allocation, rather than a court assessment of who actually caused the default, frequently determines who answers it. Where no such assignment has been made, and the company has no managing director, whole-time director, or manager, every director of the company becomes, by default, an officer in default — a residual rule that sweeps in even directors who played no active part in the impugned conduct[20].

The Act does supply a partial corrective for a defined class of directors. Section 149(12) creates a safe harbour for independent directors and for non-executive directors who are neither promoters nor KMPs, limiting their liability to acts of omission or commission that occurred with their knowledge, attributable through board processes, and with their consent or connivance, or where they failed to act diligently[21]. This provision is examined in detail in Section 7.6 below, because its interaction with actual enforcement practice is, this paper argues, the single most consequential fault line in the current regime. Section 447 of the Act supplies a further, more serious layer: any person director, KMP, auditor, or other officer found guilty of "fraud", defined broadly to include any act, omission, concealment of a fact, or abuse of position committed with intent to deceive, to gain undue advantage, or to injure the interests of the company, its shareholders, or the public, is punishable with imprisonment of not less than six months, extendable to ten years, and a fine of not

[19]Companies Act, 2013, s. 2(60)(iv)–(v).
[20] Treelife, "Decoding Officer-in-Default under the Companies Act, 2013".
[21]Companies Act, 2013, s. 149(12).

less than the amount involved in the fraud, extendable to three times that amount, with a mandatory minimum term of three years where the fraud involves public interest[22].

Because Section 447 offences are cognizable and non-bailable, and because the Supreme Court has recently clarified that cognizance of offences covered by Section 447 including false statements under Section 448 — may be taken only upon a complaint by the Serious Fraud Investigation Office or an officer authorised by the Central Government[23], this track effectively operates as a distinct, gate-kept criminal regime running in parallel to the officer-in-default provisions that govern ordinary regulatory defaults.

C. The Attribution and Mens Rea Model under the General Criminal Law

General criminal law approaches the question from the opposite direction. Rather than asking who formally held office, it asks whether the individual director possessed the mental element the offence requires, or whether a specific statute creates a fiction that dispenses with that requirement. The doctrinal foundation was laid in *Standard Chartered Bank v. Directorate of Enforcement*, where a Constitution Bench held that a company is liable to be prosecuted and punished for criminal offences, including those requiring mens rea, and rejected the older technical objection that a company could not be prosecuted for an offence carrying a mandatory custodial sentence[24]. *Iridium India Telecom Ltd. v. Motorola Inc.* then addressed the mechanism by which a company, being incapable of forming intent in its own right, can nonetheless be said to possess mens rea: the Court held that where an offence is committed in relation to the corporation's business by a person or body of persons in control of its affairs, and where the degree of control is such that the corporation can be said to think and act through that person or body, the mens rea of the controlling mind is attributed to the corporation itself on the principle of the company's “alter ego”.[25]

[22]Companies Act, 2013, s. 447 and Explanation thereto.
[23]Yerram Vijay Kumar v. State of Telangana, decided by the Supreme Court of India on 9 January 2026.
[24]Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530.
[25]Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74.

Sunil Bharti Mittal v. CBI, arising out of the 2G spectrum allocation proceedings, confronted the reverse question: if a controlling individual's intent can be imputed upward to the company, can the company's culpability be imputed downward to make every senior officer a co-accused merely because the company itself stands accused? The Supreme Court answered firmly in the negative, quashing the summons issued against the appellant, who had been proceeded against as the "directing mind and will" of his company without any independent finding of personal involvement.

The Court held that, in the absence of a specific statutory provision creating vicarious liability, a director cannot be held vicariously liable for an offence committed by the company, and that an individual can be made an accused alongside the company only where there is sufficient material to demonstrate that individual's own active role coupled with the requisite criminal intent[26]. This standard has since been reiterated by the Supreme Court in *Shiv Kumar Jatia v. State (NCT of Delhi)*, which confirmed that a chairman, managing director, or director may be arrayed as an accused alongside the company only where sufficient evidence establishes both an active role and criminal intent directly connected to the alleged offence[27].

Read together, these decisions establish a coherent two-track rule: mens rea may be attributed upward from a controlling individual to the company (the *Iridium* principle), but it cannot be attributed downward from the company to every officer who happens to hold senior rank (the *Sunil Bharti Mittal* qualification), unless a specific statute displaces this default position by creating an express fiction of vicarious liability. It is precisely such an express fiction that the Negotiable Instruments Act, 1881 supplies, and it is to that provision the third of the four tracks that this paper now turns.

D. The Statutory Vicarious Liability Model under the Negotiable Instruments Act, 1881

Section 141 of the Negotiable Instruments Act, 1881 provides that where an offence under Section 138 dishonour of a cheque for insufficiency of funds is committed by a

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[26]Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609, relying on and applying Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581.
[27]Shiv Kumar Jatia v. State (NCT of Delhi), AIR 2019 SC 4463.

company, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business, as well as the company itself, is deemed guilty and liable to be proceeded against and punished accordingly34. This is precisely the kind of express statutory fiction that *Sunil Bharti Mittal* contemplated as a permissible basis for vicarious criminal liability.

However, the fiction operates only after a threshold procedural condition is satisfied. In *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, the Supreme Court held that arraigning the company itself as an accused is imperative for maintaining prosecution under Section 141; a director or authorised signatory cannot ordinarily be prosecuted on a vicarious basis where the company, as the principal offender, has not been impleaded. This arraignment requirement sits logically prior to the pleading inquiry developed in the later line of Section 141 cases, because the court must first be satisfied that the company is before it before examining whether the complaint contains sufficient averments against the individual director or officer.[28]

The reference bench decision in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* settled the threshold pleading requirement: the complaint must specifically aver, as a fact, that the accused was at the material time in charge of and responsible to the company for the conduct of its business; it is not enough that the substance of the allegations, read as a whole, might support such an inference, nor is it sufficient merely to recite that a person was a director. The Court held in terms that "every person connected with the company shall not fall within the ambit of the provision", and that only those directors who were, in fact, in charge of and responsible for the conduct of business at the relevant time attract liability[29]. The Court did, however, recognise a narrower category for whom liability follows more readily from office alone: by virtue of the responsibilities inherent in the position, a managing director or joint managing director is, without more, in charge of and responsible for the conduct of the company's business and is therefore covered by Section 141; the actual signatory of

[28]Negotiable Instruments Act, 1881, s. 141(1).
[29]S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.

the dishonoured cheque is separately covered under sub-section (2) of Section 141 regardless of formal designation[30].

Subsequent decisions elaborated rather than displaced this framework. *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal* emphasised that vicarious liability under Section 141 is an exception to the general rule that penal statutes must be strictly construed, and that specific allegations demonstrating how and in what manner a director was responsible for the conduct of business are indispensable[31]. *K.K. Ahuja v. V.K. Vora* clarified that a general averment tracking the statutory language is sufficient to sustain a complaint at the summoning stage, leaving the accused to demonstrate the contrary at trial, while *Gunmala Sales Pvt. Ltd. v. Anu Mehta* undertook an exhaustive review of the preceding authorities and largely endorsed this position, holding that a High Court should not, save in exceptional cases involving unimpeachable and incontrovertible material, quash proceedings at the threshold where the statutory averment has been made[32].

It is against this background that *Pooja Ravinder Devidasani v. State of Maharashtra* assumes particular importance. The appellant, a non-executive director who had in fact resigned from the board before the relevant cheques were even issued, faced criminal complaints on the strength of allegations that she was "in charge of and at the helm of affairs" of the company. The Supreme Court quashed the proceedings, holding that a non-executive director, being "a custodian of the governance of the company" rather than a participant in its day-to-day affairs, cannot be fastened with vicarious liability under Section 141 merely by virtue of holding that office, and that the complaint, taken as a whole, attributed no specific role to her in the commission of the offence[33].

The tension that this line of authority leaves unresolved, and that the literature reviewed in Section 6 above repeatedly identifies, is practical rather than doctrinal. The pleading standard demanded by *S.M.S. Pharmaceuticals* and *Paintal* is, on paper,

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[30]S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, 20 September 2005.
[31]National Small Industries Corp. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330.
[32]K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48; Gunmala Sales Pvt. Ltd. v. Anu Mehta, (2015) 1 SCC 103.
[33]Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1.

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a substantive filter; in practice, once a complainant has learned to draft a complaint that recites the statutory formula "the accused was, at all material times, in charge of and responsible for the conduct of the business of the company" that filter offers little protection against the initiation of proceedings, because *K.K. Ahuja* and *Gunmala Sales* make clear that such general averments suffice to resist quashing at the threshold. The director is left to establish the falsity of the averment at trial.

A process that, for a non-executive or independent director with no actual role in the transaction, can extend over years before vindication under *Devidasani* is finally secured. The vicarious liability model under the NI Act is, in other words, formally narrower than the officer-in-default model examined in Section 7.2, but procedurally almost as exposed, because the substantive limitation operates chiefly as a trial-stage defence rather than as an effective pre-trial screen.

E. The Fraudulent and Wrongful Trading Model under the Insolvency and Bankruptcy Code, 2016

The fourth track is the most recently developed and, this paper suggests, the most conceptually precise. Section 66(1) of the Insolvency and Bankruptcy Code, 2016 empowers the Adjudicating Authority, during the corporate insolvency resolution process or liquidation, to direct any person who was knowingly party to the carrying on of the corporate debtor's business with intent to defraud creditors, or for any fraudulent purpose, to make such contribution to the assets of the corporate debtor as the Authority thinks fit[34]. Section 66(2) creates the narrower and more frequently litigated "wrongful trading" limb, applicable on an application by the resolution professional during the corporate insolvency resolution process, under which a director or partner may be made liable to contribute to the corporate debtor's Assets if two cumulative conditions are satisfied: first, that before the insolvency commencement date the director knew, or ought to have known, that there was no reasonable prospect of avoiding the commencement of a corporate insolvency

[34]Insolvency and Bankruptcy Code, 2016, s. 66(1).

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resolution process; and second, that the director did not exercise due diligence in minimising potential loss to creditors[35].

The provision supplies its own objective due diligence standard, deeming a director to have exercised due diligence if the diligence shown was reasonably expected of a person carrying out the same functions in relation to the corporate debtor[36], a standard evidently modelled on the English wrongful trading provision in Section 214 of the UK Insolvency Act, 1986.

NCLAT practice has, overall, applied this standard with a rigour that the officer-in-default framework generally lacks. The Tribunal has repeatedly emphasised that Section 66 sets a high threshold, that clear and cogent material demonstrating dishonest intent or wrongful trading is required, and that mere proximity to insolvency or a poor commercial outcome is not sufficient to found liability *Nalinesh Kumar Paurush v. Shree Vishvamurte Tradinvest Pvt. Ltd.*, arising out of the insolvency proceedings concerning *Temple Leasing and Finance Ltd.*, the NCLAT set aside the contribution order imposed on suspended directors under Section 66, holding that the statutory conditions for fraudulent or wrongful trading had not been satisfied. The Tribunal emphasised that a transaction audit report, without cogent supporting material, cannot by itself establish that the directors knew there was no reasonable prospect of avoiding insolvency and nevertheless failed to exercise due diligence to minimise loss to creditors. Where the Tribunal has found liability, it has typically done so on the strength of conduct going well beyond an ordinary commercial misjudgment for instance, the deliberate writing off of non-existent inventory to defraud creditors. Conversely, *Rakshit Dhirajlal Doshi and Anr. v. Chirag Shah (Liquidator)* illustrates the same rigorous approach from the opposite direction: the NCLAT set aside the finding of fraudulent or wrongful trading in respect of managerial remuneration, holding that documented payments for managerial services rendered in the ordinary course of business could not attract Section 66 in the absence of clear and cogent evidence of intent to defraud creditors.

[35]Insolvency and Bankruptcy Code, 2016, s. 66(2)(a)–(b).
[36]Insolvency and Bankruptcy Code, 2016, s. 66, Explanation.

A further clarification of considerable doctrinal significance came in *Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd.*, where the Supreme Court held that applications under Section 66 for fraudulent or wrongful trading are conceptually distinct from avoidance applications under Sections 43, 45, and 50 of the Code, and that the Adjudicating Authority must keep the two regimes analytically separate rather than treating Section 66 as a residual, catch-all recovery device for any transaction that a resolution professional finds objectionable[37].

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 has since placed this distinction on a firmer statutory footing by introducing separate definitions for avoidance transactions under a new Section 5(2A) and for fraudulent or wrongful trading under a new Section 5(9A), assigning each its own procedural pathway[38]. The overall effect of this line of development is a model of director liability that is conduct-specific, temporally bounded to the pre-insolvency period, and anchored to an objective, role-calibrated diligence standard a structure considerably more disciplined than the largely status-based officer-in-default framework, and one this paper returns to in its recommendations.

F. The Illusory Safe Harbour: Independent Directors Between Section 149(12) and Enforcement Practice

Section 149(12) of the Companies Act, 2013 was Parliament's considered response to a real governance problem: independent and non-executive directors are recruited precisely because they are not involved in day-to-day management, and a liability regime that treats them identically to executive directors and KMPs would either deter capable individuals from accepting such roles or reduce the role to a passive formality incapable of providing real oversight.

The provision is drafted as a non-obstante clause, applicable notwithstanding anything else in the Act, and it limits the liability of an independent director, and of a non-executive director who is not a promoter or KMP, to acts of omission or commission by the company that occurred with that director's knowledge,

[37]Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd., (2025) ibclaw.in 120 SC.
[38]Insolvency and Bankruptcy Code (Amendment) Act, 2026, inserting ss. 5(2A) and 5(9A) into the Insolvency and Bankruptcy Code, 2016.

attributable through board processes, and with that director's consent or connivance, or where the director had not acted diligently.[39]

The textual structure of this provision repays close attention, because it is precisely here that the literature reviewed in Section 6 identifies a gap between text and practice. The sub-section, on its face, creates two independent limbs joined by the disjunctive "or": liability attaches either where there is knowledge attributable through board processes together with consent or connivance, or, independently, where the director simply failed to act diligently.

Read this way, a director who had no actual knowledge of a specific wrongdoing could still be held liable on a freestanding failure-of-diligence basis, while a director who did have knowledge but neither consented to nor connived in the wrongdoing would not, without more, be liable on the knowledge limb alone. Scholarship from the NLIU Centre for Business and Commercial Laws has argued that recent interpretations have inverted this structure, treating the absence of proven knowledge as a threshold bar that forecloses any inquiry into diligence at all, effectively converting a disjunctive two-limb test into a single, knowledge-gated one. Read literally, this drift makes the safe harbour narrower for enforcement purposes than the diligence limb Parliament actually enacted, since a director whose passivity itself constitutes a failure of diligence the very mischief the diligence limb was designed to capture escapes liability so long as no separate finding of "knowledge" is recorded.

This interpretive drift is compounded by developments in enforcement practice that this paper considers more troubling still. In proceedings connected with allegations of financial mismanagement at Manpasand Beverages Ltd., the Securities and Exchange Board of India examined the conduct of the company's independent directors and, according to the secondary literature discussing that order, proceeded on the basis that independent directors sitting on the audit committee were expected to have interrogated the company's financial statements with a degree of rigour that came close to imputing knowledge from committee membership itself.

[39]Companies Act, 2013, s. 149(12).

A parallel concern is reflected in commentary on the IL&FS group proceedings, where it has been observed that audit committee membership creates a presumption of deeper knowledge that is not available to the ordinary statutory safe harbour applicable to independent directors generally. The practical effect of this trend is to erode, in a specific and identifiable category of cases. The very distinction of Section 149(12) was designed to preserve: between a director who is passively uninvolved and one who has knowingly failed to act.

Once committee membership or attendance at meetings where financial statements were tabled is treated as sufficient to establish "knowledge attributable through board processes", the knowledge limb threatens to become almost as easy to satisfy as the general averment that *K.K. Ahuja* permits under the Negotiable Instruments Act, and the independent director is left, once again, to vindicate their actual non-involvement only after protracted proceedings rather than at the threshold.

This is not to suggest that independent directors should never bear liability; the entire premise of appointing a person to sit on a board and, in particular, on an audit committee, is that the person brings independent judgment to bear on precisely the kind of financial reporting risk at issue in matters such as Manpasand and IL&FS. The concern this paper raises are narrower and more structural: a safe harbour that is textually disjunctive and conditional is being applied, in a meaningful subset of enforcement matters, as though it were conjunctive and near automatic once board or committee membership is shown. That gap between statutory text and applied practice is, on the analysis developed in this paper, symptomatic of the same underlying problem identified across all four tracks a persistent slippage from functional culpability toward formal or quasi-formal status as the operative basis of liability.

G. Synthesis: Four Models, One Person

Bringing the four tracks together yields a composite picture. The officer-in-default model under the Companies Act, 2013 is triggered by formal office or formal allocation of responsibility, is civil and quasi-criminal in character, and is tempered only by the Section 149(12) safe harbour for a defined class of outside directors — a safe harbour this paper has argued is being applied more narrowly than its text supports.

The general criminal law's attribution model, by contrast, is triggered only by proof of personal mens rea or an express statutory fiction and expressly forecloses the downward imputation of corporate guilt onto senior officers absent from such proof. The Negotiable Instruments Act's vicarious liability model occupies an intermediate position: it is, in principle, as demanding as the general criminal law in requiring a specific factual nexus between the individual and the conduct of business, but its pleading threshold has, in practice, converged toward the low bar associated with formulaic averment, leaving the substantive protection to operate chiefly at trial rather than at the threshold.

The Insolvency and Bankruptcy Code's fraudulent and wrongful trading model, finally, is the most tightly calibrated of the four: it is conduct-specific, temporally confined to the period immediately preceding insolvency, and anchored to an objective, role-based diligence standard that NCLAT has, on the whole, applied with real rigour.

The consequence of this arrangement is that a single course of conduct for instance, a director's continued acquiescence in a company's deteriorating financial reporting practices as insolvency approaches can be pursued along any of the four tracks, each carrying a different threshold, a different procedural gateway, and a different practical experience for the director concerned. A regulator dissatisfied with the evidentiary burden the general criminal law imposes may find it easier to proceed instead under the Companies Act's officer-in-default provisions, or a creditor dissatisfied with the delay inherent in a Section 447 SFIO Reference may find it more expedient to press a Section 66 IBC application once insolvency proceedings have commenced.

This is not, in itself, evidence of abuse; regulators and creditors are entitled to invoke whichever statute Parliament has made available. But it does mean that the question “is this director personally liable?” is answered, in practice, as much by the choice of forum as by the underlying facts a state of affairs difficult to reconcile with the idea that Indian law applies a single, principled theory of managerial culpability.

V. SUGGESTIONS AND RECOMMENDATIONS

The analysis above suggests that reform should proceed not by inventing a fifth liability track, but by disciplining the four that already exist around a common functional idea: that liability should track a person's actual proximity to, and influence over, the impugned decision, rather than the formal office that person happens to hold. The following recommendations are offered in that spirit.

1. **Codify a Functional Definition of "Proximity to Decision-Making":** The Ministry of Corporate Affairs should consider inserting an explanatory provision into Section 2(60) of the Companies Act, 2013 that directs adjudicating authorities, when identifying the officer in default in the absence of a specific board assignment, to have regard to factors such as actual attendance and participation in the relevant board or committee discussion, and documented dissent or its absence. The director disclosed functional expertise, rather than defaulting automatically to the residual rule that every director is an officer in default. This would not weaken the provision deterrent function; it would simply ensure that the residual rule operates as a genuine fallback rather than as the default outcome in every case where internal allocation has not occurred.
2. **Restore the Disjunctive Reading of Section 149(12) Through Explicit Clarification:** Given the interpretive drift identified in Section 7.6, this paper recommends that Parliament, or in the interim the Ministry of Corporate Affairs through a clarificatory circular, confirm expressly that the two limbs of Section 149(12) the knowledge-and-connivance limb and the failure-of-diligence limb operate disjunctively and independently, as the word "or" in the text already indicates. A clarificatory note of this kind would not dilute the accountability of independent directors; it would instead ensure that a director cannot escape liability for genuine passivity merely because no separate finding of "knowledge" has been recorded, while simultaneously preventing regulators from treating committee membership alone as constructive knowledge sufficient to defeat the safe harbour altogether.
3. **Introduce a Genuine Pre-Trial Screening Mechanism under Section 141 of the NI Act:** The practical convergence, documented in Section 7.4, between the

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pleading standard articulated in *S.M.S. Pharmaceuticals* and the low threshold for resisting quashing endorsed in *K.K. Ahuja* and *Gunmala Sales* suggests that complaint-stage screening under Section 141 needs a more substantive procedural anchor than the bare recitation of statutory language currently provides. This paper recommends that complaints under Section 141 be required to annex, or specifically refer to, some contemporaneous document board resolutions, delegation of authority instruments, or KMP appointment letters evidencing the accused's role in the transaction giving rise to the dishonoured cheque, rather than relying solely on a verbal averment that the accused was “in charge of and responsible for” the company's business. Non-executive and independent directors could be permitted to file a limited, affidavit-based response at the summoning stage addressing only their factual role, without this being treated as a premature trial on the merits.

4. **Extend the IBC's Conduct-and-Diligence Template to the General Company Law Regime:** Given that the Section 66 IBC standard knowledge of an approaching, unavoidable insolvency combined with an objective, role-calibrated failure of due diligence has proved comparatively resistant to over-inclusion in NCLAT practice, this paper recommends that a structurally similar test be considered for incorporation into the Companies Act's general fraud and officer-in-default provisions, at least for civil and quasi-criminal consequences short of Section 447 prosecution. Rather than asking only whether a person held a particular office, the inquiry would ask whether that person knew, or in the reasonable exercise of the functions actually assigned to them ought to have known, of the relevant wrongdoing, and whether they failed to exercise the diligence reasonably expected of a person performing those functions. This would align the general company law standard with the more calibrated insolvency-specific standard Parliament has already legislated, without requiring wholesale statutory redrafting.

5. **Strengthen Institutional Coordination to Prevent Forum-Shopping Across Tracks:** Finally, given that the same underlying conduct may be pursued through the Companies Act, the general criminal law, the NI Act, and the IBC,

often by different regulators or private complainants acting without knowledge of parallel proceedings, this paper recommends that the Ministry of Corporate Affairs, the Serious Fraud Investigation Office, and the Insolvency and Bankruptcy Board of India establish a shared information-sharing protocol, building on the existing power under Section 212(17) of the Companies Act, 2013 permitting the Serious Fraud Investigation Office to share information with other investigating authorities[40], so that a director's exposure across tracks is at least visible to each forum considering proceedings, even where consolidation of the proceedings themselves is not practicable.

VI. CONCLUSION

The doctrine of the corporate veil remains, and should remain, the framework Indian courts apply when the question is whether a company's separate personality should itself be disregarded. But that doctrine, developed through *LIC v. Escorts*, *Renusagar*, and *Vodafone*, answers only a fraction of the questions that arise when a director or KMP is pursued for corporate misconduct. The greater share of that work is done by four freestanding statutory architectures the Companies Act's officer-in-default provisions, the general criminal law's attribution doctrine, the Negotiable Instruments Act's vicarious liability fiction, and the Insolvency and Bankruptcy Code's fraudulent and wrongful trading regime each of which has developed its own standard of culpability largely without reference to the others.

This paper has argued that the resulting fragmentation is not a neutral feature of a mature, pluralistic legal system, but a genuine doctrinal problem: it permits materially identical conduct to attract materially different consequences depending on which regulator or complainant elects to act and under which statute, and it has allowed the textually disjunctive safe harbour Parliament built for independent directors under Section 149(12) to be narrowed, in a meaningful subset of enforcement practice, through an expansive treatment of board and committee membership as constructive knowledge.

[40]Companies Act, 2013, s. 212(17).

None of this is an argument for weakening director accountability. India's corporate governance landscape has, if anything, more reason than most jurisdictions to insist on real personal responsibility from those who direct corporate affairs, given the scale of retail and institutional capital now intermediated through Indian companies. It is, instead, an argument for coherence: that the standard applied to a promoter-director who exercises genuine control should not be more lenient, merely because the Companies Act's formal allocation provisions happened to name someone else as officer in default, than the standard applied to a genuinely uninvolved independent director who happens to have attended the meeting at which a fraudulent transaction was tabled.

The Insolvency and Bankruptcy Code's Section 66 standard conduct-specific, time-bound, and anchored to an objective, functionally calibrated diligence test offers the clearest template Indian law currently possesses for what such coherence might look like across the remaining three tracks. Whether Parliament, the judiciary, or the relevant regulators take up that template is, ultimately, a question this paper leaves open; what it has sought to establish is that the question deserves to be asked as a single, unified inquiry, rather than answered four separate times, in four separate statutes, for the same director and the same conduct.

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