International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435(Online) Volume 15, Issue 02, February 2026)

Section 66 of the Insolvency and Bankruptcy Code, 2016: Theoretical Framework, Practical Applicability, and Judicial Evolution.

***Abstract*-- In force as a vital accountability pillar, section 66 of the Insolvency and Bankruptcy Code, 2016[1], plays a major role in ensuring corporate accountability in India. While the provisions made from section 43 to section 51 only seek to undo all suspicious transactions and return the assets to the corporate debtor, section 66 targets the directors and individuals involved and makes them personally liable for fraudulent and wrongful trading. By actively empowering the National Company Law Tribunal to order directors, partners, and third parties to make contributions to the asset pool of the corporate debtor, section 66 effectively removes the veil and ensures that corporate insolvency is not misused as a means to avoid corporate accountability.**

This paper critically evaluates the basis of the law as it is constituted under Section 66, including fraudulent trading governed by Section 66(1), where intent to defraud creditors is required, and wrong trading as governed by Section 66(2), where liability may arise even in the absence of any dishonesty, provided that directors fail to take steps to minimize creditors' loss while knowing that insolvency is inevitable.Moreover, the paper will address the temporary immunity that has been granted pursuant to Section 66(3) of the Insolvency Act, which has taken place as a result of the COVID-19 pandemic.

The study also tracks the development of Section 66 from judicial decisions of the NCLT, NCLAT, and the SC. An important milestone came with the SC's pronouncement in Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. (2025)[2], which settled the question of the conceptual difference between Section 66 recoveries and avoidance instances while sustaining the autonomy of the Committee of Creditors in dealing with Section 66 recoveries.

Thus, even though the theory is sound, its actual enforcement is limited due to evidentiary requirements, procedural lethargy, and the unwillingness of Resolution Professionals to initiate these procedures.

There is also a comparative analysis with the legal regimes of the UK, Australia, and the US. It points out the balance struck by India's law. Finally, the paper also suggests reforms to be made to improve the efficacy of Section 66, such as reporting for Resolution Professionals, standard tests for "reasonable prospects," contribution guidelines, and forensic support.

***Keywords*--Insolvency and Bankruptcy Code, 2016, corporate accountability, procedural lethargy, avoidance instances, reasonable prospects.**

I. INTRODUCTION

Under the umbrella of the enactment of the Insolvency and Bankruptcy Code, 2016, a watershed moment has been achieved by the Indian government regarding the insolvency of the corporate sector of the country. While earlier the Indian corporate insolvency regime was governed by a medley of various laws such as the Companies Act, 2013; the Sick Industrial Companies (Special Provisions) Act, 1985[3]; and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the new IBC brought a time-bound system of insolvency that is focused on the overall maximization of asset value.

Within this elaborate framework of dealing with insolvency, Section 66 holds a special place for itself by being crafted as a deterrent mechanism for fraudulent and wrongful trading, which permits the Adjudicating Authority (National Company Law Tribunal-NCLT) to hold individuals such as directors and partners liable for acts committed during insolvency procedures. Section 66 is therefore an expression of the legislative intent that is not to allow corporate insolvency as a means to avoid accountability for asset stripping, dishonest business practices, and reckless business decisions.

[1] https://ibclaw.in/section-66-fraudulent-trading-or-wrongful-trading/

[2] https://ibclaw.in/piramal-capital-and-housing-finance-ltd-vs-63-moons-technologies-ltd-and-ors-supreme-court/

[3] https://www.indiacode.nic.in/repealedfileopen?rfilename=A1986-1.pdf

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The distinction is that while Sections 43 to 51, dealing with avoidance transactions, are concerned mainly with reversing suspect transactions and restoring property to the corporate debtor, Section 66 exceeds this measure by dealing not just with the transactions, but also with individuals and piercing the corporate veil, so that wrongdoers contribute to the assets of the debtor corporate entity. It is for this reason that Section 66 is regarded as one of the most powerful provisions of the IBC as a means of ensuring accountability in corporate governance.

The ambit and significance of Section 66 have undergone substantial changes owing to judicial interpretations. The Supreme Court's ruling in the case of Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. (2025) has drawn clear inferences regarding the distinction between avoidance actions and provisions of fraudulent trading. The ruling has also enhanced the independence of the Committee of Creditors in addressing Section 66 recoveries.

The article presents an overall academic analysis of Section 66 with various aspects such as the statutory framework, legislation, judicial interpretation, practical issues, and a global perspective, and various changes that can be made.

II. Statutory Framework: Text And Structure Of Section 66

Section 66 of the Code is part of Chapter VI of the IBC. The section is titled "Adjudicating Authority for Corporate Persons." Therefore, its codification is Section 66 of the IBC. Section 66 is unique in that it targets acts of individuals while ensuring that there is some degree of accountability on the part of individuals who managed the corporate debtor during insolvency. Unlike Sections 43 to 51, which cover avoidance transactions, Section 66 is specific to individuals. It enables the NCLT to hold individuals at fault accountable. The NCLT is authorized to hold them accountable in the event that they were involved in fraudulent or wrongful acts.

The provisions of Section 66(1) relate to the case of fraudulent trading. It is applicable when, during the Corporate Insolvency Resolution Process (CIRP) or liquidation[4], it is established that the corporate debtor's business was carried out with the intent to defraud the creditors or for any other fraudulent purposes.

For that, there must be the presence of three fundamental factors: (i) that the corporate debtor carried out the business, (ii) that there was an intent to defraud the creditors, and (iii) that the accused were aware of the fraudulent activities carried out by them. The appropriate redress under this subsection of the IBC is not punitive in nature, as the NCLT can only order the condemned parties to contribute as much as it thinks fit to the assets of the corporate debtor. One of the very significant features of the provisions of Section 66(1), which sets it apart from other provisions of the IBC, is that besides the directors, the provisions can also hold other related individuals or third parties involved in the fraudulent activities liable.

Section 66(2) provides for the case of wrongful trading. This is different from fraudulent trading because, in wrongful trading, dishonesty of intent is not a prerequisite. This section of the act only applies to directors and partners. According to Section 66(2), "if the directors of a company and the partner in a firm knew that there was no reasonable prospect of avoiding an insolvency, through lack of due diligence in minimizing creditor losses, they can be made personally liable." The essential components of wrongful trading comprise the actual and constructive knowledge of impending insolvency and the lack of due diligence by the directors, "in relation to the question of minimizing losses and to the standard of the reasonably competent person."

This subsection of the Insolvency Act 1986 puts a great responsibility on the directors of a company because when they actually know that the company has no prospect of avoiding an insolvency, they should behave responsibly by not incurring further debt and preventing the dissipation of assets and attempting to save the company for the creditors.

Section 66(3) was introduced through the IBC (Second Amendment) Act, 2020. This section was introduced under the COVID-19 pandemic. Under this section, no application under Section 66(2) can be made for defaults that are arising under Section 10A. Section 10A suspended CIRP proceedings for defaults that occurred between 25 March 2020 and 25 March 2021. This special protection under Section 66(3) was imposed to shield businesses and their directors from any liability that may arise due to unforeseen circumstances. However, this special protection under this section does not extend to any action that arises under Section 66(1).

[4] https://www.ascentium.com/in/blog/corporate-insolvency-resolution-process-under-ibc/

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III. Conceptual Distinction: Section 66 Versus Avoidance Transactions (Sections 43–51)

One of the most important analytical problems is the distinction between Section 66 and the avoid ancetransaction.

Avoidance transactions under Sections 43 to 51 include:

- Preferential transactions (Section
- Undervalued transactions (Section
- Extortionate credit transactions (Section 50)
- Fraudulent transactions

These provisions emphasize the identifiable transaction that resulted in an unfair impairment of the corporate debtor's asset pool and offer a compensation mechanism that involves reversal of transactions.

In contrast, Section 66 is not necessarily concerned with a specific transaction. It is more concerned with conduct-based liability and the remedy is a contribution order to individuals.

A key difference between the two is also with regard to their view on what is termed "Resolution Professional." In this context, in accordance with Section 25(2)(j), the f has the duty of filing applications with regard to "avoidance transactions." Notably, however, this does not apply to Section 66, which is not included in Section 25.

This distinction was emphatically reinforced in the judgment of Piramal Capital v. 63 Moons (2025) of the Supreme Court wherein it held that avoidance transactions involved restoration of traceable assets, while Section 66 involves a personal contribution for wrongful behavior that may be dealt with by the commercial wisdom of creditors.

IV. Historical And Legislative Evolution Of Section 66

In addition, Indian laws regarding corporate matters prior to the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) primarily focused on regulating fraudulent practices through specific provisions of the Companies Act, 2013, such as Section 339, which related to fraudulent conduct of business while winding up, and Section 447, which related to punishment for fraud. However, these laws have not been very effective in dealing with such issues in actual practice, owing to the time constraint in dealing with cases related to insolvency and winding up. In spite of a close similarity between Section 339 and the current Section 66(1) of the IBC, the effectiveness of such provisions in this new legislation lies in the fact that its applicability is extended beyond winding up, resulting in greater accountability in cases of CIRP and liquidation.

Another section that is heavily influenced by international standards of insolvency legislation very obviously by the UK's Insolvency Act of 1986[5]is Section 66. The structure of this section follows Section 213 of the UK legislation under the title of fraudulent trading, and Section 214 regarding wrongful trading. This model follows the principles that boards should not operate a business or a company irrespectively or irresponsibly when insolvency appears to be unavoidable. This approach aims to ensure that those boards are held liable should their misconduct increase creditor loss. This aspect arises from the object of the IBCfairness and good corporate governance.

Further, it is also pertinent that the Insolvency Law Committee contributed significantly to determining the policy direction behind Section 66. The Insolvency Law Committee (2018)[6] suggested that Section 66 must be retained without incorporating a fair look-back period, as fraudulent behavior is not limited to a few occurrences but is a recurring practice. This gave rise to Section 66 as an anti-abuse measure to ensure that insolvency does not provide a "safe harbour" for individuals engaging in wrongful practices. Moreover, due to the COVID-19 outbreak, it can be seen that IBC (Second Amendment) Act, 2020 introduced Section 66(3) to protect directors from wrongful trading under Section 66(2) for defaults made during the Section 10A suspension period. Despite this being a much-needed economic relief measure, this also brings into question moral hazard with regards to accountability for negligent management practices during the pandemic.

V. Practical Applicability: How Section 66 Is Invoked

Under Section 66 of the IBC Code, 2016, any application regarding fraudulent or wrongful trading can only be done by the RP under CIRP or by the liquidator under liquidation. This implies that any creditor does not have a direct right to go to NCLT under Section 66. But creditors can indirectly influence this procedure by raising issues with the Committee of Creditors (CoC) and pressing the RP to initiate the process if any suspicious behavior is noticed. This indicates that such serious issues are dealt with by a responsible RP rather than being used as a litigation practice.

[5] https://www.legislation.gov.uk/ukpga/1986/45/contents

[6] https://ibbi.gov.in/ILRReport2603_03042018.pdf

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The RP has an important duty of detection of fraudulent or wrongful trading through conducting a comprehensive investigation of the corporate debtor's conduct of trade. While conducting an investigation of the debtor's conduct of trade, the RP will normally look for indicators such as a review of the debtor's audited financial statements, minutes of board meetings, related-party transactions, loan agreements, guarantees, asset movements, as well as significant changes in management like the resignation of directors. Generally, while fraudulent trading is easily identified through activities such as the diversion of funds, forgery of accounts or other documents, or the setting up of "shell companies" to conceal assets, the indicators of wrongful trading are reckless borrowing, carrying on of a business while insolvent, as well as failure to make efforts to reduce the amount of loss once a debtor is perceived to be insolvent.

If the NCLT is satisfied that the test of fraudulent trading under Section 66(1) or that of wrong trading under Section 66(2) is satisfied, it has the jurisdiction to make an order for contribution as the primary remedy. In an order for contribution, the guilty persons involved in the corporate fraud can be directed to contribute to the assets of the corporate debtor. The amount of contribution that is made under this remedy is discretionary. This remedy not only strengthens the hand of the creditors but also acts as a deterrence because the directors and other responsible persons of the company cannot take shelter under the doctrine of separate legal personality.

VI. Evidentiary Burdens and Practical Challenges

Though Section 66 is considered to be one of the strongest provisions in the Indian IBC to establish liability against directors and other parties in fraudulent or wrongful trading cases, in practice, the limitation lies in proof due to serious evidentiary issues. Under Section 66(1), proving "intent to defraud" is very difficult because fraudulent intent is seldom claimed or directly evident. There is a need to prove intent with strict evidence; intent has to be inferred from circumstances like sudden depletion of assets if detected, diversion of funds to relatives or misrepresentation in invoices and manipulation in statements of accounts, or issuing guarantees. It has to be established that they were dishonest in their intent to cheat their creditors. Tribunals have consistently held that loss or business decisions or risks do not in themselves amount to fraud unless evidence is provided to demonstrate dishonest intent to cheat creditors.

Likewise, establishing liability with regard to claims of wrongful trading under Section 66(2) requires establishing that directors knew, or ought to have known, that insolvency was unavoidable, yet they have not acted to reduce creditor losses. It requires detailed financial analysis, such as cash flow analysis, debt repayment history, insolvency ratios, as well as internal communication such as minutes of meetings of boards of directors. Moreover, directors are quick to defend their conduct on the basis of a decline in market performance, compliance with expert advice of qualified professionals, and an honest assessment that there are chances of reviving the business. Apart from proof of guilt, another disadvantage of Section 66 applications is that they cause a delay in the insolvency process, as it can be difficult to meet the CIRP deadlines of 330 days. Moreover, as filing an application under Section 66 remains discretionary for RP, they are more cautious, as they are not equipped with funds for forensic examination, are apprehensive of retaliatory lawsuits, and are expected to prepare the resolution plan on time, thus reducing the invocation of Section 66 applications despite strong theoretical backing.

VII. Judicial Evolution: NCLT, NCLAT, and Supreme Court Developments

The initial decisions for the NCLT and NCLAT have consistently held that the mere occurrence of insolvency cannot suffice to establish the occurrence of fraud, and therefore, a Section 66 claim cannot arise simply because the Corporate Debtor suffers a loss. In the case of Jet Airways, the NCLT at Mumbai held that the Corporate Debtor cannot be held liable under Section 66 in the absence of "clear evidence" to prove the "fraudulent intent" underlying the directors' decisions. In essence, the NCLT held that poor management decisions cannot amount to "fraudulent trading" per se. In the case of RTIL Limited, the NCLT at Mumbai held that "commercial losses caused" by dint of "business decisions" cannot be equated to "fraud" "unless dishonest intention is clearly established." The approach taken by the NCLT in the foregoing decision was re-validated in the Edelweiss Financial Services Limited Case involving the NCLAT in 2023, wherein the NCLAT effectively held that if a transaction is "for a valid reason," then the said transaction cannot "prima facie" be held to be "fraudulent" "unless evidence is strongly established" to the said contravening intent.

Similarly, over time, courts have even extended the explanation of Section 66 by including Section 66(1) in that explanation.

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It has been accepted that liability is not limited to directors; rather, even third parties can be held liable if they were "knowingly parties" to fraudulent trading. This is coupled with the UK stance as accepted in cases such as Bilta, wherein even individuals who were not directly part of corporate management were held liable in cases of fraudulent schemes. The biggest judicial milestone in Indian jurisprudence with regards to S.66 has come in the Supreme Court judgement in Piramal Capital and Housing Finance Limited v. 63 Moons Technologies Limited (2025).This case arose in the backdrop of the CIRP of the DHFL, involving a fraud amount of nearly ₹ 45,000 crore. The Supreme Court upheld the resolution plan that was approved under the CoC, allocating the Section 66 recoveries to the successful resolution applicant at a notional value of ₹ 1, thereby rejecting the interference by the NCLAT. The Court has also made a significant observation that the proceedings in accordance with Section 66 are conceptually distinct from avoidance actions, as the recovery under Section 66 is not compulsory under Section 25(2)(j).

Most importantly, it reiterated that the viability of the commercial decision of the CoC on the distribution of such recoveries cannot be subject to any scrutiny except if they offend the IBC. The Court also noticed that avoidance recovery is subject to separate consideration, and Section 66 recovery is subject to negotiation in the plan. This decision reinforced the autonomy of creditors and the strategic value of Section 66. Further, the accountability aspect of Section 66 is aligned to Section 29A, which was reiterated in Anuj Jain v. Axis Bank (2020)[7], where the Supreme Court underscored the importance of preventing re-entrance for the promoter who caused the initiation of insolvency.

VIII. Comparative Global Perspective

Comparing Section 66 of the Insolvency and Bankruptcy Code, 2016, with similar insolvency accountability frameworks in major jurisdictions helps in understanding its importance. Since the law on insolvency globally balances the protection of interest to creditors with corporate risk-taking, different jurisdictions have different standards for holding directors personally liable.

India's Section 66 is largely inspired by the UK model, while it also emulates elements seen in the Australian and US insolvency laws.

IX. United Kingdom (UK): The Closest Model to Section 66

The United Kingdom insolvency framework would be the most direct comparative reference to Section 66, as the provision in the Indian enactment has been heavily lifted off from the UK Insolvency Act, 1986. The UK law distinguishes clearly between fraudulent trading and wrongful trading, which is almost identical to the structure of Section 66(1) and Section 66(2).

X. Fraudulent Trading UK Section 2138

Under the UK Insolvency Act, it needs to be proved that business was carried on with an intent to defraud creditors or for fraudulent purposes. The standard is indeed strict since it is a matter of dishonest intention. Courts in the UK demand convincing evidence of deliberate deception; and one should not confuse mere business failure or inadequate commercial judgment for the same. The Indian approach under Section 66(1) is similar in this regard-the tribunals have insisted upon clear evidence of fraudulent intention.

XI. Wrongful Trading UK Section 214

The concept of wrongful trading under UK law is especially relevant as there is liability without the need for fraud. Directors would be held liable if they continued trading when they knew or ought to have concluded that there was no reasonable prospect of avoiding insolvency, failing to act that could minimize losses to creditors.

UK courts have developed an extensive case law on the following:

- The point of "inevitable insolvency," and
- The 'reasonable prospect of avoiding insolvency' test.

This standard has impacted Indian tribunals with regard to their decisions on the application of Section 66(2), particularly based on the assessment of directors' decisions against their objective judgment through financial and managerial prudence. The UK approach here emphasizes an element of governance that prevents directors from engaging in wrong business operations that will further add to creditors' losses.

[7] https://www.taxmann.com/research/fema-banking-insurance/top-story/105010000000018039/anuj-jain-vs-axis-bank-whither-banks-experts-opinion

[8] https://www.purnells.co.uk/dont-do-this/law-library/fraudulent-trading-law

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XII. Australia: Strict Liability for Insolvent Trading

Australia follows an even stricter policy compared to that of India and the UK. The relevant section is Section 588G of the Australian Corporations Act 2001, which concerns insolvent trading.

Under this model, directors would be liable if debts are incurred when the company was already insolvent, or when such a debt renders the company insolvent. Unlike Section 66(2) of the Indian Code, the Australian provision specifically proscribes directors of companies that have admittedly traded while insolvent, even without any intent to defraud creditors.

Key Features of the Australian Model

- Insolvency needs to be proven to have taken place, at which point liability comes into effect.
- There are also possible civil penalties, compensation orders, and in grave cases, criminal liability imposed on the directors.
- The law tends to be a greater deterrent since it dissuades directors from taking any risk upon the occurrence of insolvency.

This is stricter than India's wrongful trading provision because Section 66(2) does not automatically penalize insolvent trading. It requires proof that the directors have failed to show due diligence and have not taken steps to minimize the loss. Thus, Australia places a greater onus on the directors, whereas India allows relatively more latitude to account for legitimate attempts at business recovery.

XIII. United States (Us): No Direct Wrongful Trading Provision

The United States' system of insolvency under Chapter 11 is vastly different. Unlike the UK, Australia, or India, there is no direct concept of Wrongful Trading. The system of director's liability is covered by the following:

- Breach of fiduciary duties
- Fraudulent transfer laws, and
- Equitable doctrines developed by the courts.

Fiduciary Duty Approach

The duties that directors owe are of a fiduciary nature, such as duty of care and duty of loyalty. However, if insolvency ensues, these duties are often viewed as shifting. In such situations, duties are owed to creditors. However, if directors act out of bad faith or self-interest or act under gross negligence, then corporate law rules become relevant.

Fraudulent Transfer Laws

On the other hand, the law in the US has a strong concentration of fraudulent conveyance/fraudulent transfer provisions, under which the court has the power to reverse any transactions that are carried out with the aim of defrauding the creditors. These provisions are somewhat similar to the provisions pertaining

Practical Impact

Consequently, within the US, directors are not prosecuted for engaging in trading activities during financial difficulties, as long as such actions are consistent with their fiduciary and business judgment tests. This explains why the US insolvency framework is viewed as creditor-friendly or rehabilitative.

XIV. Comparative Evaluation: India's Position In Global Insolvency Accountability

From a comparative perspective, it appears that India's Section 66 takes a middle path between the UK and Australia. It conforms to the structure of the UK's law in keeping liability for breach of duty that is grounded in fraudulent intent separate from liability in negligence under Section 66(2). It also excludes the starkly strict approach of Australian law in making an offence of trading while insolvent.

Furthermore, unlike the US system, India's system differs because the IBC specifically provides a basis for the imposition of personal liability under insolvency law.

Therefore, the structure of the Indian Insolvency Code is actually rather akin to the accountability-driven approach of the UK and Australian legisla-tion, while at the same time allowing for a degree of flexibility so as not to discourage business risk-taking.

This comparative framework also lends vigor to the IBC's objective of creditor protection, while even allowing for attempts to revive the enterprise, and hence the international relevance of Section 66.

XV. Interplay With Other Laws And Enforcement Complexity

Likewise, Section 66 of the IBC, 2016, is intended to enhance accountability by making provisions for personal contribution against Directors, Promoters, etc., for fraudulent trading. However, the implementation of Section 66 is such that there are multiple regulatory and criminal law provisions involved.

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Thus, a grave issue of enforcement complexity arises as the law of insolvency is a comprehensive system that does not exist insulated from other laws. Most often, the very acts of fraud that attract the provisions of Section 66 will also attract provisions of the PMLA, 2002, regulatory provisions of the SEBI, the Companies Act, 2013, criminal law provisions of the IPC, or the newly constituted BharatiyaNyayaSanhita[9], thereby causing a delay in the insolvency process due to conflicting jurisdictions, attachment of properties, etc.

A serious complication arises when fraudulent trading involves laundering of funds. In such cases, enforcement agencies like the ED may initiate action under the PMLA and attach assets of the corporate debtor or promoters. While such attachment is aimed at preventing dissipation of "proceeds of crime," it directly affects insolvency resolution because the attached assets cannot be freely used for distribution among creditors. Even if the NCLT passes a contribution order under Section 66 directing the wrongdoers to bring back money into the insolvency estate, actual recovery becomes difficult if the same assets are already frozen or confiscated under PMLA proceedings. This reduces the practical utility of Section 66 because the insolvency estate shrinks, ultimately lowering creditor recoveries. Similar issues arise in cases involving SEBI, where market fraud or financial manipulation leads to separate enforcement action, and under the Companies Act where SFIO investigations may proceed for corporate fraud.

Therefore, the overlap of insolvency proceedings with the parallel enforcement procedures that are in place will create a conflict of two different goals: recovery under the IBC and confiscation under the anti-money laundering procedures such as PMLA. This issue is highly pertinent as a policy concern since the value-maximization goal of the IBC cannot easily coexist with the focus of anti-money laundering laws on punishment and confiscation of the assets of organizations that have engaged in fraud. Thus, in the absence of coordinating mechanisms under the law, Section 66 of the IBC can remain strong in theory but fail to offer the benefits that might result from such actions in practice, particularly with regard to large-scale fraud insolvency proceedings that involve multiple proceedings.

XVI. Reform Recommendations And Future Scope

Even though Section 66 of the IBC is an effective provision for holding people liable in cases of fraudulent or wrongful trading, its full impact has remained subdued because of problems of evidence, the need for prompt action, and confusion in its interpretation. In order for the efficiency of Section 66 to increase, targeted changes are adequately required. The scope for the future of Section 66 lies in protecting creditors while holding the directors accountable on an equitable basis, with the intention that insolvency should not be an alibi.

One change that is required in the existing regulations is the imposition of a requirement of "mandatory reporting" from the Resolution Professional. Currently, the making of an application under Section 66 is voluntary in nature; however, due to such a requirement, many cases of potential misconduct are not being addressed properly. One reform that could help improve the existing approach is the inclusion of a requirement that the Resolution Professional should be mandated to present at least the preliminary findings in the Section 66 application in the Information Memorandum itself, or in the meetings held in the CoC. This would help in ensuring the transparency required for the documentation to be carried out properly, notwithstanding the inability to institute legal action in the matter. Another reform that could be implemented in the regulations is "establishing standards for determining the 'reasonable prospect of avoiding insolvency' within the meaning of Section 66(2)." Under the existing regulations, the "knew or ought to have known" clause in the "wrongful trading provisions" is difficult to deal with from the regulatory point of view. The IBBI could issue guidelines in the form of debt-equity ratios, cash-flow insolvency, etc.

Furthermore, India should also develop a more structured approach to measuring the contribution liability. Currently, NCLT enjoys broad discretion in deciding the quantum of contributions to be made by the wrongdoer, which hampers the predictability of the outcome. Implementing the UK model, which measures by incremental losses occurring after the "point of insolvency," will offer greater fairness and deterrence. Furthermore, the incorporation of a "look-back" approach will also help India in the enforcement arena.

[9] https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

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While the avoidance provisions (Sections 43 to 51) provide insight into relevant time limits, there is no applicable time limit under Section 66, which might result in uncertainty. A "look-back" approach, as suggested, will be of significant help in aligning Section 66 with the overall insolvency legislative framework.

Another promising area of reform lies with technology integrations, as the use of AI-based auditing tools and forensic accounting software can aid RPs in identifying patterns of suspicious related-party transactions, diversion of funds, asset stripping, and liability management, thereby assisting them with faster evidence-based Section 66 applications. Moreover, it goes without saying that another aspect for consideration, with regard to such reforms, would be to reconsider Section 66(3), with its blanket immunity provisions for wrongful trading claims, as only applicable to the COVID default period. Indeed, although it provided much-needed economic support, it risks elevating a culture of moral hazard, and a more balanced approach, protecting directors acting in true distress while at the same time not ruling out reckless and irresponsible conduct, would be more desirable.

XVII. Conclusion

One of the most prominent mechanisms of accountability in the Indian regime of insolvency and bankruptcy is offered under section 66 of the Insolvency and Bankruptcy Code of 2016. This measure of accountability fixes the issue of fraudulent trading and hence stops directors and promoters of companies from misusing the procedures of corporate insolvency as an excuse for their wrong and fraudulent actions.

However, in spite of its strong theoretical base, Section 66 also faces a number of hurdles in its practical application. The burden of proof, as stipulated in Sections 66(1) and 66(2) of the Code, which pertains to intent, as well as managerial negligence, in turn, dissuades Resolution Professionals from filing cases under this section.

A significant role has been played by the judicial evolution pertaining to its application. Jurisprudence under the NCLT and the NCLAT well established the principle that business failure cannot, as a consequence, be equated to fraud in the applicability and efficacy of Section 66. The indubitable guidance emanating from the Supreme Court ruling in the case of Piramal Capital v. 63 Moons (2025) strengthens the doctrine germane to the distinction between other avoidance provisions and the applicability of Section 66 while bolstering the commercial freedom of the Committee of Creditors with regard to Section 66 recoveries.

In the long run, Section 66 may also function as a deterrent for reckless and dishonest management. However, the actual efficacy of Section 66 will only be attained by significantly improving clarity in procedures, infrastructure in forensic accounting, and standardization of interpretation. The bottom line is that Section 66 adds to the credibility of the IBC framework to the extent that the code is built upon the understanding that corporate insolvency must not reward any wrongdoing but must uphold ethical and responsible business practice.