NM Docket # 3
Veil. Intent. Money.

If Edition 1 was about crisis and Edition 2 about choice, this one is about **consequence**! The kind that follows when intent, control, or money are in question.

This edition of NM Docket examines the law's evolving response to fraud, money laundering, and litigation finance, three areas where transparency and accountability are continually being tested.

From piercing the corporate veil under the PMLA to uncovering fraudulent intent under Section 66 of the IBC, and the rise of litigation funding reshaping access to justice, this issue follows the threads of control, intent, and consequence through the modern legal landscape. Let's start with Rapid Wrap, a quick summary of an interesting mandate taken up by us at NM.

Rapid Wrap: The Twilight Zone of Insolvency! When Intent Turns to Liability.

The case came to us when a resolution professional uncovered something more than bad business decisions. They were transactions that didn't quite add up.

During the twilight phase before insolvency, the company had continued operations despite clear signs of distress. Loans were extended to connected entities, assets moved without consideration, and financial records went suspiciously silent.

The question was whether this was mere mismanagement or fraudulent trading under Section 66 of the IBC.

Our team worked closely with the RP to build the evidence trail. We examined board minutes, bank transfers, and communications to establish what courts call "knowledge of inevitable insolvency." The intent wasn't written down. It had to be inferred from conduct.

The case drew on precedents like *Shri Baiju Trading v. Arihant Nenwati*, where the NCLAT clarified that even a single act of deception could show fraudulent intent, and *Edelweiss ARC v. RTIL*, where the court drew a line between poor decisions and deliberate deceit.

When the NCLT finally ruled, it held that directors who knowingly carried on business with no prospect of solvency had crossed from negligence into intent to defraud.

The outcome reinforced a critical truth that insolvency isn't just about balance sheets; it's about behaviour.

What stood out

- Section 66(1) targets fraudulent trading - deliberate intent to deceive creditors.
- Section 66(2) covers wrongful trading - continuing business despite knowing insolvency is unavoidable.

- The law applies to anyone “knowingly involved”, not just directors.
- There is no look-back period, allowing RPs to trace misconduct without temporal limits.

What GCs and boards should take away

- Assess solvency early. Document every decision during financial distress.
- Keep minutes detailed. Show that the board debated creditor interests.
- Avoid new debt unless there’s a realistic recovery plan.
- Watch for red flags: related-party transfers, hidden liabilities, or gaps in audit records.
- Involve counsel and auditors before liquidity turns into liability.

The thin line between risk-taking and wrongdoing is often drawn in hindsight. Section 66 ensures that intent, not outcome, defines culpability.

From fraud and intent to concealment and control, the next story moves deeper — to where the corporate veil meets the PMLA.

The Guide: Piercing the Corporate Veil under the PMLA

Money laundering no longer hides in briefcases or offshore accounts, it hides behind incorporation documents.

The Prevention of Money Laundering Act (PMLA) has evolved into India’s sharpest tool for tracing illicit funds and holding not just companies, but the individuals behind them, accountable.

The problem

Corporate structures can turn from legitimate vehicles of business into layers of concealment, where the “owner” isn’t the one in control, and beneficial ownership is disguised through webs of subsidiaries and nominees.

Section 3 of the PMLA criminalises direct or indirect involvement in concealing, possessing, or projecting proceeds of crime as untainted. But tracing that involvement often means lifting the corporate veil to look beyond the company and identify the real decision-makers.

What the law enables

- **Sections 5–9:** Allow the ED to attach and confiscate properties linked to proceeds of crime.
- **Sections 17–19 & 50:** Empower search, seizure, and summons, even without an FIR.
- **Doctrine of piercing the veil:** Lets authorities go beyond the company to identify who truly controlled or benefited from the laundering.

When the veil is lifted

Courts have upheld this approach where company structures were clearly used to camouflage ownership or move proceeds through layering. Transactions through shell entities, circular loans, or cross-border transfers are typical triggers.

Key red flags

- Frequent fund transfers to related parties or offshore accounts.
- Discrepancy between declared activity and actual cash flow.
- Use of intermediaries or professional fronts to obscure control.
- Inconsistent KYC and beneficial ownership disclosures.

Compliance pointers

- Maintain strong KYC and beneficial ownership records.
- Use automated monitoring tools to flag unusual patterns.
- Conduct independent AML audits and board-level reviews.
- Ensure cooperation with FIU-IND and ED in a transparent manner.

The corporate veil protects legitimate business, but under the PMLA, opacity is a liability. Transparency isn't just compliance; it's defence.

We've covered conduct. We've covered control.

Let's talk about cost. We've answered a few FAQs here.

1. Is litigation funding actually legal in India?

Yes. Completely!
Indian courts have repeatedly held that there is no prohibition on third-party funding, as long as lawyers do not fund the litigation (Bar Council rules restrict advocates, not private funders). The Privy Council in *Ram Coomar* and the Supreme Court in *A.K. Balaji* confirmed this position.

2. Can the funder control the litigation strategy?

No, and this is the biggest trap. Funders may finance the case but they cannot dictate pleadings, choose lawyers, decide settlements, or influence strategy. Excessive control risks making the agreement "champertous," rendering it unenforceable. Courts strike down arrangements that look extortionate or give the funder the driver's seat.

3. Does a litigation funder have to disclose their involvement?

Sometimes, yes. Certain arbitral institutions and courts ask parties to disclose the presence of a funder to avoid conflicts of interest (especially during arbitrator appointments). Disclosure is not universal, but increasingly expected in high-value disputes, insolvency matters, and cross-border arbitrations.

4. Can funders be held liable for adverse costs?

Only if contracts say so! In *Tomorrow Sales Agency v. SBS Holdings (2023)*, the Delhi High Court held that funders are not automatically liable for cost awards unless they explicitly agree to take on that obligation. Parties must negotiate cost-sharing, ATE insurance, and indemnities clearly in the agreement.

5. Are litigation funding agreements enforceable?

Yes, but only if drafted properly.
The agreement must avoid:

- transferring a *bare right to sue* (barred under the Transfer of Property Act),
- unconscionable returns or "extortionate" terms,
- clauses allowing the funder to override claimant autonomy.

Courts apply principles of equity, fairness, and good conscience. If the arrangement feels like exploitation, it won't survive judicial scrutiny.

One last update before we close this edition.
We've launched something new — a space for longer, sharper conversations.

Introducing: Off The Record — The NM Podcast

Our brand-new podcast is now live.
And in the very first episode, we talk about something every litigator needs to get right:

10 Things to Keep in Mind While Filing an SLP

A straightforward, experience-backed checklist that'll save lawyers time, trouble, and unnecessary defects.

Listen to Episode 1 on Spotify and follow us there! Click here

More episodes coming soon, and yes, they get even more interesting!

That's all for this edition of NM Docket.
If Edition 3 had a theme, it was that the law remembers everything: intent, control, conduct, and even silence.

In the weeks ahead, we'll continue exploring the questions that sit at the intersection of insolvency, enforcement, and strategy, from cross-border recoveries to digital evidence and the nuances that don't always make it into judgments.

Until then, keep reading, keep questioning, and as always, keep an eye on the fine print.