The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

THE FINE PRINT AFTER THE DEAL: WHY SELLING YOUR COMPANY IN INDIA DOESN'T SET YOU FREE?

Eva Singh Chalia

INTRODUCTION

Ask any Indian founder what the best day of their entrepreneurial journey looks like, and most will describe something close to an acquisition closing, the very moment a buyer's payment lands and years of effort become tangible. Given the staggering figures of around USD 118.87 billions of Indian M&A transactions expected in 2024, there will be many more entrepreneurs enjoying the experience of selling their businesses. But few of them will be ready for what happens next.

Handing over your business does not end your legal responsibility. Hidden clauses in the sale agreement often leave an entrepreneur financially liable long after the deal has closed.

This blog uncovers three of the most consequential: representations and warranties, the absence of a fair disclosure standard in Indian law, and sandbagging clauses.

I. YOU ARE SELLING MORE THAN YOUR SHARES

When a founder sells their company, the transaction is documented in a Share Purchase Agreement. Inside it is a detailed list of statements the founder must make about the business, covering everything from tax history and employee agreements to intellectual property ownership and pending lawsuits. These are called representations and warranties, and they carry more legal weight than most founders realize when they sign. A representation is a factual claim about the present or past state of the business. A warranty goes further; it is a promise that if any of those facts are incorrect, the founder will personally compensate the buyer for any resulting loss. Corporate law experts have long understood that these clauses are the main source of post-acquisition disputes. They serve as the contractual way for buyers to seek financial compensation when a business turns out to be different from what was promised.[1]

The real risk here, is that founders are warranting statements that even their own internal finance and legal teams, and even their auditors may not have been completely privy to. A payroll compliance error that happened two years ago, a contract with a change of control that hasn't been read, software that has a restrictively licensed OSS component included, each can be silently transformed into a claim, the deal closes, the cash moves, the liability doesn't.

II. WHEN USD 60 MILLION SAYS IT ALL: THE AVITEL PRECEDENT

Even if you believe that to be abstract, consider what happened with the promoters of the Indian media and post production firm Avitel Post Studioz. HSBC invested in the company on the basis of claims made as to its financial position and commercial pipeline. When the claims were discovered to be fraudulent, a SIAC arbitral tribunal ordered the promoters to pay $ 60 million in damages. The award was upheld by the Indian Supreme Court in 2020, in what would appear to have definitively resolved the question whether disputes like these ought to go to Indian courts or arbitral bodies.[2]

Although Avitel involved blatant misrepresentation, it demonstrates a broader lesson for founders: breach of warranty can result in substantial financial liability. Roughly one third of post-closing disputes world-wide stem from a breach of warranty claim[3]. India is no exception, but rather an illustration of a situation where the legal framework for these disputes is playing catch up with deal flow.

III. THE DISCLOSURE PROBLEM NOBODY HAS FIXED

Here is a typical situation where it happens more than it should. A founder, during due diligence process raises potential regulation issue to the buyer's legal team on the other side of the negotiating table. That conversation takes place. Buyer nods. Transaction completes. After six months after the closing, buyer brings up warranty claim over the very same issue. D

[1] Shardul Amarchand Mangaldas & Co., M&A Disputes in India: Legal Frameworks, Quantum Analysis, and Resolution Pathways, Lexology (2024), https://www.lexology.com.

[2] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2020) SCC OnLine SC 656, Civil Appeal No. 5145 of 2016 (India).

[3] . SRS Acquiom, 2024 M&A Claims Insights Report (2024), https://www.srsacquiom.com.

This is perfectly valid in the Indian legal environment due to lack of statutory standard of fair disclosure in M&A. In the UK, if a seller has given honest and comprehensive disclosure of an issue to a buyer during a transaction process, a subsequent warranty claim over the same issue would be unenforceable, as the buyer would be deemed to have fully informed of the risk and accepted it. There is no such comfort under Indian law. As discussed at length in legal writing on Indian M&A practice, the lack of an accepted comprehensive doctrine of disclosure means that arguments will always default to contractual construction, without locus standing for sellers who have orally provided information.

For Indian founders, the lesson is simple: unless disclosures are formally recorded in the disclosure schedule, verbal assurance provide little legal protection.

IV. SANDBAGGING: THE CLAUSE THAT REWARDS BAD FAITH

The sandbagging clause just takes the unfairness further. According to a pro-sandbagging provision a buyer is permitted to bring a post-closing indemnification claim even as to a defect that was known and discovered by the buyer prior to the closing of the transaction. This buyer finds an issue, doesn’t say anything to the founder (walks out with keys), and then invoices the founder for it. Anti-sandbagging protections provisions which preclude a buyer from making indemnification claims based on matters that are actually known to the buyer prior to closing are a standard negotiating point in sophisticated U.S. And U.K. Transactions. In Indian mid-market M&A, they are neither discussed nor ever included. Most founders do not know to ask for them, and even fewer first-time sellers are aware of their existence. This lack of widespread knowledge is by design; it reflects who is sitting across the bargaining table from an experienced lawyer, and who isn't.

V. WHAT NEEDS TO CHANGE

The picture presented is one where Indian founders have substantially more exposure than those in established M&A markets by design, because founders generally warrant, have no legislative protection around disclosure and enter into agreements containing Sandbagging provisions with a limited understanding of what they entails and are in a legal jurisdiction where W&I, the product used to transfer post-closing R&W risk in to insurers in the US and UK is still in its nascent stages.

The solution requires both legislative and transactional reforms. Legislation needs to include a prescribed fair disclosure provision where the burden on sellers would shift depending on if there was evidence of surfacing all material risks to buyer during due diligence. Transactionally founders need access to lawyers who negotiate indemnification caps, survival periods and anti-sandbagging provisions not as an afterthought but as a part of the transaction. Till such a time the transfer of closing money to the founder is not the endpoint, but only the beginning of another struggle for most Indian founders.