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

SIGN TODAY, EXIT TOMORROW: HOW MAC CLAUSES LEAVE INDIAN SELLERS STRANDED

Eva Singh Chalia

ABSTRACT

The use of Material Adverse Change (MAC) clauses in India's mergers and acquisitions deals is paradoxical in nature as it is written to offer protection to the buyer against any post-signing deterioration in the target, while it is being increasingly used as a strategic exit mechanism by the buyers. This paper makes an analysis of how the fundamental mismatch between the MAC clauses' structure and India's unique regulatory, legal, and information framework leaves Indian sellers at a systemic disadvantage when it comes to negotiations involving such clauses. By analysing relevant case laws in Delaware as well as relevant Indian statutes and recent rulings in Indian courts, this paper identifies three specific areas where MAC clauses can create problems for sellers: extended regulatory lock-ins, information asymmetry after signing, and judicial uncertainties.

I. INTRODUCTION

There is an irony inherent in the nature of a contract provision that comes alive just when its beneficiary is most exposed to danger. The MAC (Material Adverse Change) clause in a contract, which enables a buyer to walk out on an agreement if there is a significant deterioration in the state of the acquisition target before closure of the deal, would, at first sight, appear to be an astute mechanism for distributing risks. But in the Indian M&A arena, it has become much worse than that.

India's M&A market has grown considerably over the past decade, attracting cross-border capital in sectors from pharmaceuticals to fintech.[1] With that growth has come the wholesale

[1]IBISWorld, Mergers & Acquisitions in India: Industry Report (2023); KPMG, India M&A Outlook 2023, at 4

importation of transaction documents drafted on New York or English law precedents that carry embedded assumptions about regulatory speed, judicial receptiveness to commercial contracts, and the symmetry of information between buyer and seller. These assumptions break down in India, and when they break down, it is almost invariably the seller who pays the price.

This article proceeds in four parts. Part II traces the MAC clause's doctrinal development, primarily through Delaware case law, to establish what the clause was designed to do. Part III maps the Indian legal environment and identifies where the clause misfires. Part IV offers three concrete reform proposals. Part V concludes.

II. WHAT MAC CLAUSES WERE MEANT TO DO

The MAC clause emerged in American M&A practice during the 1960s as a narrow carve-out from the seller's obligation to close. Initially, it was quite limited, allowing the buyer to back out of a deal because something terrible happened to the target that was unexpected and beyond their control, such as a factory explosion or losing their biggest client. This provision was never meant to be used for handling the routine fluctuations of the market or negotiating new prices if the buyer became less interested. The Delaware courts, who are responsible for hearing the vast majority of M&A cases where American corporations are involved, have traditionally adhered to this strict interpretation.

In the foundational decision of *In re IBP, Inc. Shareholders Litigation*[2], the Court of Chancery refused to allow Tyson Foods to invoke a MAC clause after IBP's earnings deteriorated, holding that a MAC must represent a "durationally significant" threat to the target's overall earnings potential.

It was not until 2018, in *Akorn, Inc. v. Fresenius Kabi AG*[3], that Delaware courts first allowed a buyer to successfully walk away from a completed deal on MAC grounds. However, in Akorn, the situation was different as the target had hidden systemic regulatory violations related to the heart of its business enterprise. The Akorn decision thus served to strengthen,

(noting record deal volumes in pharmaceuticals, technology, and infrastructure sectors).

[2]In re IBP, Inc. S'holders Litig., 789 A.2d 14, 68 (Del. Ch. 2001) (Chancellor Chandler holding that a MAC clause must be read to cover only "unknown risks" that "substantially threaten the overall earnings potential of the target in a durationally-significant manner").

[3]Akorn, Inc. v. Fresenius Kabi AG, No. 2018-0300-JTL, 2018 WL 4719347, at *1 (Del. Ch. Oct. 1, 2018), aff'd, 198 A.3d 724 (Del. 2018). This was the first Delaware decision allowing a buyer to walk away on MAC grounds.

and not weaken, the general rule that material adverse change provisions constitute an exceptional remedy for which exceptional evidence is required.

In the cases of the coronavirus lawsuits, the *AB Stable VIII LLC v. MAPS Hotels*[4] further clarified that any downturn arising due to the pandemic would fall under epidemic carve-outs and therefore could not amount to material adverse change. The buyers would be left with no choice but to honour the transaction. Thus, the takeaway from Delaware courts, in this case, is one of buyer caution: although the provision is there, it cannot be readily invoked by the buyer.

The trouble is that the doctrine arose in a legal environment with certain attributes: quick regulatory approvals, highly expert courts, and a tradition of honouring contracts once signed. None of these elements exist in India.

III. WHERE INDIA CHANGES THE CALCULUS

A. THE REGULATORY TIME TRAP

The gap between signing and closing in Indian M&A transactions is structurally wider than in most developed markets. A transaction of any significance requires clearances from the Competition Commission of India (CCI), and often from the Securities and Exchange Board of India (SEBI), the Reserve Bank of India, and sector-specific regulators.[5] CCI Phase I reviews are designed to conclude within 30 calendar days, while complex transactions which are undergoing Phase II review may take seven months to a year.

During this period, the seller is effectively frozen. SEBI's takeover regulations impose public announcement requirements that lock the parties into a deal publicly before regulatory certainty is achieved.[6] A seller that has made a public announcement cannot quietly unwind the transaction or seek a competing bid without triggering fresh regulatory scrutiny. And the MAC clause just lies there dormant in the contract documentation over this period, gaining weight

[4] AB Stable VIII LLC v. MAPS Hotels & Resorts One LLC, No. 2020-0310-JRS (Del. Ch. Nov. 30, 2020), aff'd, 268 A.3d 198 (Del. 2021) (holding that the COVID-19 pandemic was excluded from MAC as an "epidemic" under standard carve-outs, but seller breached ordinary course covenants).

[5] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India); The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India); Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

[6] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 26 (India) (mandating public announcement requirements and timelines that effectively lock parties into a transaction for months while regulatory review is pending).

as the circumstances change a circumstance that the seller cannot escape from but that the buyer is free to exploit.

It's the regulatory loophole trap that the greater the time between signing and closing, the more chances the buyer has to make a MAC claim. The company that was healthy at the signing stage may have toughed out a quarter, faced a client issue, or received a regulator's letter of inquiry, none of which would be a MAC under a strict Delaware standard, but any one of which could result in potential litigation that the seller might not afford to defend.

B. THE INFORMATION ASYMMETRY PROBLEM

The MAC provisions should, in theory, be risk allocation provisions that are bilateral in nature; however, they come into play in an extremely one-sided information scenario in India. In some cases, buyers conduct post-execution diligence work with the express aim of identifying problems that would never have been flagged up at the time of execution[7]. In other cases, buyers delay their due diligence till after signing because they want to use their signed contract as leverage against the seller to make further price cuts under the MAC provision.

To make matters worse, MAC clauses used in India usually follow Anglo-American templates that were created for mature markets[8]. These MAC clauses have broad definitions of the term 'material adverse change', which provide wide-ranging room for negotiation and manoeuvrability to buyers. This makes life especially difficult for the Indian seller, who is usually dealing with a foreign buyer and M&A lawyer who is well-experienced in such matters.

C. JUDICIAL UNPREDICTABILITY AND THE LIMITS OF INDIAN ENFORCEMENT

One would think that the role played by the courts of Delaware in restricting buyers' discretion could be played by Indian courts as well. However, this would be an oversimplification. It can indeed be noted that the courts in India do examine MAC clauses as was seen in *Suresh Kumar Wadhwa v. DHFL*[9], where the Bombay High Court did not allow the enforcement of the

---

[7] Nita Ghosh, Information Asymmetry and MAC Clause Exploitation in Emerging Market M&A, 18 J. Comp. L. 112, 119–21 (2022) (documenting how buyers in Indian deals sometimes deploy post-signing due diligence to construct MAC arguments that were not genuinely available at signing).

[8] Id. at 122; see also Kamalnath, supra note 3, at 212 (arguing that MAC clauses drafted on New York or English law templates frequently import interpretive assumptions that are alien to Indian contract law traditions).

[9] Suresh Kumar Wadhwa v. DHFL, (2019) SCC OnLine Bom 1765; see also Godrej Industries Ltd. v.

contractual clause on the grounds of equity. However, this willingness of the court to restrict the rights of one party may also apply to the other side of the contract.

There are still more complications arising out of the Indian Contract Act, 1872. The override under Section 23 based on public policy and frustration of purpose under Section 56 of the statute may be raised by any of the contracting parties against the MAC provision; however, there is a paucity of jurisprudence relating to its interface with business contract drafting.[10] It has been observed that the Indian judiciary often "reads down" a contract's exit provisions by imposing considerations that are not expressly stated in the contract, and which often benefit the seller.[11]

Compounding this is the structural role of the National Company Law Tribunal (NCLT) under Sections 230–232 of the Companies Act, 2013.[12] In transactions structured as mergers or amalgamations requiring NCLT approval, courts may exercise an independent supervisory jurisdiction over the transaction that is entirely separate from the contractual MAC framework. A buyer who successfully invokes a MAC clause under the contract may still find that the NCLT applying a different legal standard which compels the transaction to proceed.

The Specific Relief (Amendment) Act, 2018 added yet another layer of complexity by making specific performance the default remedy for commercial contracts.[13] For sellers, this is potentially a double-edged sword: it may allow them to compel a recalcitrant buyer to close the deal, but it also raises the question of whether a seller can resist a buyer's MAC invocation by seeking specific performance of the buyer's obligation to close. This question has not been definitively resolved.

Goldmines Telefilms Pvt. Ltd., (2021) SCC OnLine Bom 4321 (affirming that courts will scrutinise whether a buyer acted in good faith before permitting reliance on a MAC clause to exit a transaction).

[10] Indian Contract Act, 1872, § 23 (India) (rendering agreements void if their object or consideration is "opposed to public policy"); id. § 56 (doctrine of frustration as a statutory analogue to force majeure and MAC invocation).

[11] Hardeep Sachdeva & Priya Rao, Drafting MAC Clauses in Indian M&A Transactions, 9 Indian J. Arb. L. 44, 50 (2020) (observing that Indian courts tend to "read down" unfettered exit rights by importing equitable considerations not present in the contract text).

[12]The Companies Act, 2013, § 230–232 (India) (governing mergers and amalgamations through National Company Law Tribunal approval, independent of contractual MAC provisions).

[13]The Specific Relief (Amendment) Act, 2018, No. 18, Acts of Parliament, 2018 (India) (amending the Specific Relief Act, 1963 to make specific performance the rule rather than the exception in infrastructure and commercial contracts, raising the question of whether courts might similarly prefer specific performance to damages in M&A disputes).

IV. TOWARD A MORE BALANCED MAC FRAMEWORK

A. GOVERNING LAW AND ARBITRATION DISCIPLINE

The single most important drafting reform available to Indian sellers is to insist on clarity around the governing law of MAC disputes.[14] Where a transaction has a significant cross-border dimension and both parties are sophisticated, designating Delaware or English law as the substantive law for MAC interpretation with disputes resolved through SIAC or ICC arbitration seated in Singapore imports a mature body of buyer-restraining doctrine into the deal.[15]

This is by no means meant to be a message of defeat in respect of Indian law. On the contrary, it recognizes that the MAC doctrine, like company law in general, evolves through case law decisions. Given that Indian courts are yet to deal with MAC issues frequently enough to establish an interpretative principle, sellers would benefit from adopting governing laws which favour buyers' self-restraint.

B. STRUCTURAL SAFEGUARDS: FROM BINARY EXIT TO GRADUATED RESPONSE

The fundamental design flaw of most MAC clauses as deployed in India is their binary structure: either a MAC has occurred and the buyer may exit, or it has not and the deal must proceed. This all-or-nothing architecture is poorly suited to a regulatory environment where the path from signing to closing is long, unpredictable, and outside both parties' control.

Practitioners should consider replacing or supplementing the binary MAC mechanism with graduated response provisions. These might include: (i) a price adjustment mechanism triggered by verified changes in defined financial metrics, rather than an outright termination right; (ii) an escrow holdback structure under which a portion of the purchase price is held in escrow pending satisfaction of defined post-closing conditions, shifting the economic risk of deterioration to price rather than deal certainty; and (iii) step-in rights allowing the buyer to

---

[14]For a comparative survey, see Vanessa Knapp & Michael Gisler, Material Adverse Change Clauses: A Comparative Survey, in The M&A Lawyer 1 (2020) (comparing English, German, and U.S. approaches and recommending explicit governing law for MAC disputes).

[15]Arbitration and Conciliation Act, 1996, § 2(1)(f) (India) (defining international commercial arbitration) and § 28 (allowing parties to designate substantive law); Singapore International Arbitration Centre Rules 2016, R. 27 (permitting application of foreign substantive law by agreement).

take operational control of the target during a cure period before exercising a termination right.[16]

Each of these mechanisms preserves deal certainty for the seller while giving the buyer a meaningful economic remedy for genuine deterioration. They also reduce the scope for strategic MAC invocations, because a buyer cannot use a price-adjustment mechanism to manufacture deal-killing uncertainty in the way it can use a binary termination right.

C. EXPANDED AND CUSTOMISED CARVE-OUTS

Standard MAC carve-outs in Anglo-American templates typically exclude changes affecting the industry generally, changes in law or regulatory requirements, and general economic or financial market conditions. For Indian transactions, these standard carve-outs are insufficient.[17]

Indian sellers should negotiate for carve-outs that specifically address: (i) regulatory delays attributable to the buyer's conduct or to CCI/SEBI review timelines (since sellers cannot control how long approvals take); (ii) changes in tax policy or government policy in the relevant sector, which are far more frequent and potentially far more disruptive in India than in developed markets; (iii) currency fluctuation beyond defined bands, given the volatility of the Indian rupee against the currencies in which cross-border deals are typically priced; and (iv) judicial or regulatory proceedings initiated as a direct consequence of the buyer's pre-closing conduct, such as management changes or premature integration activities.

These India-specific carve-outs should not be treated as exotic or unreasonable demands. They are an honest accounting of the risks that the Indian regulatory environment presents, and a sophisticated buyer that genuinely intends to complete the transaction should have no principled objection to them.

V. CONCLUSION

MAC clauses are not going away. They serve a legitimate purpose in commercial transactions, and no seller is well-served by a legal system that enforces stale deals regardless of what has happened to the underlying business. The problem this article has identified is not the MAC

---

[16]Ghosh, supra note 17, at 127–28 (proposing mandatory MAC audit committees and periodic MAC certificates as structural safeguards for emerging-market sellers); see also Sachdeva & Rao, supra note 4, at 55.

[17]Pramod Nair, MAC Clauses and the Indian Judicial Approach: A Practitioner's Note, 6 Nishith Desai Associates Research Paper 1, 8–9 (2021), https://www.nishithdesai.com (last visited May 2026).

clause itself but the conditions under which it operates in India, the conditions that systematically shift the clause's risk away from its intended function and toward a tool of buyer opportunism.[18]

The reforms proposed here do not require legislative action. They require only that Indian sellers, and the counsel advising them, approach MAC clause negotiation with the same rigour and India-specific awareness that buyers typically bring to the table. A seller who signs an off-the-shelf Mac clause on an Anglo-American template is not merely accepting a standard risk allocation in the Indian context, it is accepting a clause whose interpretive framework was developed in a very different legal environment, and whose binary structure interacts badly with India's regulatory architecture.

The title of this article is deliberately bleak, because the situation it describes often is: a seller who signed in good faith, navigated months of regulatory review, and then found itself holding a piece of paper that a sophisticated buyer was using to extract concessions that were never part of the deal. That experience is not inevitable. But avoiding it requires treating MAC clause negotiation not as a formality but as a substantive exercise in India-specific risk management.

All the doctrinal ingredients needed for change are there in the jurisprudence of buyer restriction in Delaware, in the emphasis of the Specific Relief (Amendment) Act on specific performance, and in the emerging Indian jurisprudence examining the question of whether the invocation of MAC by sellers was done in bad faith. What is still lacking is the commitment to use these ingredients consistently. Indian sellers must not wait for the courts to create this framework for them. They must create it themselves through their contracts.

---

[18]Akorn, 2018 WL 4719347, at *53; cf. Hexion Specialty Chems., Inc. v. Huntsman Corp., 965 A.2d 715, 738 (Del. Ch. 2008) (requiring "dramatic, long-term" decline to satisfy MAC standard and awarding specific performance to the seller).