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LEGAL DUE DILIGENCE IN M&A TRANSACTIONS IN INDIA: IDENTIFYING AND MANAGING TRANSACTION RISKS

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Abstract

Legal due diligence is often described as a pre-acquisition investigation, yet its real value lies in converting imperfect information into decision about price, structure, contractual allocation, regulatory sequencing and post-closing control. In India, that task is complicated by overlapping company, securities, competition, foreign exchange, insolvency, tax, employment, environmental and data-governance regimes, each with different triggers and consequences. This article uses doctrinal legal research and focused comparative analysis to examine how acquirers can identify and manage transaction risks without treating due diligence as a guarantee against liability, it argues that the central weakness in conventional practice is not merely incomplete document review; it is the failure to connect a finding to a proportionate response and then to verify that response before and after closing. The article proposes a five-stage "diligence-to-remedy" framework: identify, validate, assess materiality, allocate or condition, and monitor. It applies the framework to the main Indian regulatory regimes, to contractual protections and to selected judicial decisions. It concludes that effective diligence is risked-based, grounded in evidence and tailored to the transaction, and that it depends on checking the current law, drafting remedies with care and openly addressing whatever risk remains.

Keywords: legal due diligence; mergers and acquisitions; India; transaction risk; corporate law; merger control; contractual risk allocation; data protection.

1. Introduction

Mergers and Acquisition (M&A) change who owns and controls a business, and with it the assets, contracts, people, licenses and contingent liabilities that come along. In a share purchase the target usually stays the same legal person, so its liabilities stay with it. An asset purchase

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can allow a more selective transfer, but it still raises questions about which liabilities are assumed, how employees and contracts move across and what happens to permit, taxes and consents. A merger or scheme of arrangement may involve statutory vesting and a process supervised by a tribunal. How much risk a buyer takes on, therefore depends on what it is buying and on how the deal is structured.

Due diligence exists due to the narrow information between seller and buyer. The target and its promoters normally know far more than the acquirer about the state of the records, the disputes and the informal practices of the business. That imbalance matters because of a buyer's valuation and its willingness to close, rest on assumptions about ownership, enforceable contracts, compliance and liabilities. Investigation tests those assumptions, but it cannot remove uncertainty. Documents may be missing, a regulator may later read a rule differently, a claim may surface after closing or a seller may be unable to pay on an indemnity. The goal is not to certify a business as free of risk. It is to bring material risks into view and deal with them before they block completion or integration.

This article argues that the Indian M&A diligence is better understood as transaction-risk governance than as a document checklist. Its quality depends on whether material findings lead to a decision that can be defended: to proceed, reprice, restructure, obtain a consent, impose a closing condition, seek an indemnity, defer consideration or walk away. The article contributes a five-stage diligence-to-remedy framework that connects investigation, verification, materiality, allocation and continuing control. Any such framework has to respond the form of the transaction, the sector, the buyer's existing business and the law in force on the relevant date.

The research is doctrinal and analytical. It draws on Indians statutes, regulations, official materials and selected judgements with focused common-law comparison. It involves no interviews, no confidential deal files and no original empirical work. The law is considered as at 20 October,2026 as the date a provision takes effect can differ from the date it was enacted, the article separates duties that are already operative from provisions that are not yet fully in force. It moves through the regulatory framework, the principal risks, the design of the process, contractual allocations and proposals for reforms.

2. Conceptual Foundations and Methodology

Legal due diligence looks into a target's legal status, rights, obligations, compliance and exposure so that the transaction can be properly informed. It overlaps with financial, tax, commercial, technical, environmental and operational diligence but its own task is to test

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whether the legal assumptions behind the deal hold up. Revenue from a software licence, for instance only matters If the target owns the software or validity licenses it and can keep using it after a change of control.

India has no single statutory checklist of legal due diligence that applies to every private acquisition. The scope comes instead form separate obligations covering directors, filings, securities disclosure, merger control, foreign investment, tax, labor, permits and contracts. A generic checklist is therefore not enough. The review should be shaped by the targets entity form, listing status, sector, workforce, data practices, geography and ownership chain. Materiality has to cover more than likely financial loss. It must also take in loss of a license, criminal exposure, reputational harm and the possibility that the business cannot be integrated. The doctrinal method reads statutes together with rules, commencement instruments and judicial decisions and gives priority to primary sources. Comparative law is used only to shed light on a particular issue, not on the assumption that foreign rules carry over automatically. The risk framework proposed here in an analytical synthesis and not a statutory test. Its limits include the sector-specific nature of risk, possible delays in online materials and its dependence on the deal documents, access, timing and resources.

3. A Diligence-to-Remedy Framework

A coherent process has five connected stages. The first is to identify the legal question, whether that is ownership of shares, the validity of a license, a pending tax dispute, an open offer trigger or a change of control that has not been consented to. The second is to validate the evidence independently wherever that us feasible. A seller's summary is no substitute for reading the executed contracts, statutory filings, encumbrance records, litigation dockets, license conditions or regulator correspondence. The third is to access materiality across probability, magnitude, duration, reversibility and strategic impact. A small monetary exposure can still be deal critical if it threatens a key license or intellectual property right. The fourth is to allocate or condition the risk through price, structure, consents, conditions precedent, warranties, indemnities, escrow, insurance or termination rights. The fifth is to monitor what is left through closing certificates, post-closing covenants, remediation plans and integration controls with a named owner for every unresolved issue.

This sequence of guards against two mistakes. The first is to treat discovery as if it were management: finding an environmental proceeding does not settle whether to close or how to deal with it. The second is to assume that contractual allocation wipes out public-law obligations. Indemnity may divide a loss between buyer and seller but it ordinarily does not

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bind a regulator a tax authority, an employee or a customer who sits outside the agreement. It can also be worth nothing if the seller cannot pay or a limitation period applies. Diligence has to tell apart three different things: reducing a risk, transferring it and accepting it.

4. The Indian Legal and Regulatory Framework

4.1. Corporate authority, ownership and records

The Companies Act, 2013 is the natural starting point for corporate diligence. The review should establish the target's legal existence, its constitutional documents, who has authority to decide, its capitalization, share issuances and transfers, registers of members, beneficial-interest disclosure, significant beneficial ownership, charges, annual returns and financial-statement filings. Sections 42 and 62 may matter for private placements and share issuance. Sections 56 and 58 deal with transfer and refusal of transfer, section 77-87 with charges, section 89-90 with beneficial interests and significant beneficial ownership and section 129, 134 and 137 with financial statements, board reporting and filing. How relevant each one is depends on the history and structure of the target and ir is not the case that every section applies to every deal[1].

The inquiry should reconcile statutory filings with the capitalization table proposed in the share purchase agreement and with the actual records. Undocumented options, convertible instruments, shareholder loans, pledges, pre-emption rights, drag and tag rights, anti-dilution provisions and change of control clauses can all change the economic or legal picture. Board and shareholder approvals, restrictions in the articles and in shareholder's agreements, lender consents and any sector specific ownership limit need to be read together. For mergers and arrangements, sections 230-232 and the applicable rules may call for approvals and a process before the National Company Law Tribunal. A scheme's statutory route cannot be taken for granted just because the deal is commercially called a merger.

Section 166 sets out directors' duties including acting in good faith in the interests of the company and exercising due and reasonable care, skill and diligence. This supports a review of governance, but it does not create a general statutory duty on the buyer's side to audit the target. The Supreme Court's treatment of board powers, minority right and corporate governance in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.* shows that disputes over control have to be analyzed through the Companies Act and the Companies

[1] Companies Act, no.18 of 2013, section 42,56,58,62, 77-87, 89-90, 92, 129, 134, 230-232, 447-448(India). Specific provisions should be checked against the transaction structure and applicable rules.

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constitutional and governance arrangements and not merely by looking at percentage ownership.[2]

4.2. Listed companies and securities regulation

Where the target is listed or the deal involves listed securities diligence has to take in the SEBI Regulations, 2011 (SAST) the SEBI Regulations, 2015 and the SEBI Regulations, 2015 each as embedded. Under the SAST framework acquiring specified voting rights or control can trigger an obligation to make an open offer, subject to the regulations and their exemptions and the rules on indirect acquisitions may also apply. Diligence should map the holdings of the acquirer and of persons acting in concert with it along with voting arrangements, options, control rights, earlier acquisition, public disclosures and the proposed order of transactions.[3]

Deals involving listed companies also raise questions of disclosure and market conduct. Material agreements, related party dealings, litigation and defaults may set off disclosure duties under LODR. Access to unpublished price sensitive information should be controlled through need to know access, confidentiality undertakings, insider trading procedures and records of any permitted sharing. A data room is not a safe harbour; diligence must never enable unlawful trading, selective disclosure or premature control. The consolidated SEBI instruments should be checked each time since amendments can change specific duties[4].

4.3. Competition law and merger control

The Competition Act, 2002 as amended by the Competition Act, 2023 brings qualifying acquisitions, merger and amalgamations within combination review. Alongside the traditional asset and turnover criteria there is now a deal value threshold: a transaction can be a combination where its value exceeds 2000 crore and the target has substantial business operations in India. The Competition Commission of India Regulations, 2024 and the 2024 criteria rules govern the notification regime including transaction value and exemptions. Both the monetary test and the targets Indian business nexus have to be analysed. The deal value is not limited to the headline cash price and under the applicable rules it can include indirect

[2] Companies Act, No. 18 of 2013, section 166; Tata consultancy Service Ltd. v. Cyrus Investments Pvt. Ltd. (2021) 9 SCC 449

[3] Securities and Exchange Board of India Regulations, 2011, regs. 3-5 (India)(as amended); see also SEBI, SAST Regulations, 2011 (https://www.sebi.gov.in/legal/regulations/dec-2025/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-december-5-2025-_98643.html)

[4] Securities and Exchange Board of India Regulations, 2015; SEBI Regulations, 2015. (https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3)

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deferred or non-cash consideration.[5]

Diligence should test overlaps in products, customers, suppliers, data, infrastructure, intellectual property and adjacent markets including markets where the acquirer is already active. A transaction that must be notified is subject to a standstill obligation until it is cleared or the statutory mechanism allows it to proceed. Gun jumping risk can arise from integrating early exchanging competitively sensitive information without safeguards, exercising control too soon or closing before approval. Clean teams, limits on preclosing access, hold separate arrangements, a regulatory timetable and well drafted conditions precedent can reduce that exposure. Exemptions should be worked out from the current rules and not assumed from the commercial description of the deal.[6]

4.4. Foreign investment and cross border structure

Cross border diligence has to map the residence and beneficial ownership of the buyer the ultimate investors, the source and route of the funds, the sector, the investment, pricing, remittance and reporting. The Foreign Exchange Management Act,1999 the Foreign Exchange Management Rules, 2019 the relevant RBI regulations, the consolidated FDI policy and the applicable sectoral rules each govern a different aspect of foreign investment. Investment by or beneficial ownership linked to a person or entity from a country that shares a land border with India can engage government approval restrictions under the applicable rules and policy. The analysis should not end with the immediate acquirer where ownership is indirect or control rights sit higher up the chain.[7]

Where non residents acquire or transfer Indian equity, the diligence team should test sectoral caps and entry routes, pricing requirements, permitted instruments, downstream investment rules, reporting through authorized dealer banks and repatriation conditions. Cross border mergers also need company law approval to be coordinated with FEMA cross border merger framework. The RBI's official notification list record 2026 amendments to the non-debt instruments payment and reporting regulations and to the cross-border merger regulation, so a checklist built only on the 2019 rules or the 2018 regulations may be incomplete. Closing mechanics should name the person responsible for filing the evidence the authorized dealer

[5] Competition Act, No. 12 of 2003, section 5-6 as amended by Competition Act, No.9 of 2023; Competition Commission of India Regulation, 2024, Gazette of India. (https://www.cci.gov.in/faqs)

[6] Competition Commission of India, section on combination matters, Competition Act 6 (2A). check the prevailing notification and exemption rules for each transaction.

[7] Foreign Exchange Management Act, No.42 of 1999; Foreign Exchange Management Rules, 2019 as amended; Government of India, Press Note 3. Application Depends on investor status, sector and beneficial ownership facts.

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bank will need the deadlines and the consequences of late reporting.[8]

4.5. Insolvency, distressed acquisition and claims

An acquisition connected with insolvency calls for a different model of diligence. The Insolvency and Bankruptcy Code, 2016 (IBC) governs eligibility, resolution plans, creditor participation, avoidance transactions and the legal effect of approval. Eligibility checks under section 29A can be central to whether a resolution applicant may take part at all. Sections 30 and 31 deal with plan requirements and approval while sections 43-51 and 66 address categories of avoidance and fraudulent or wrongful trading claims are subject to their terms. The buyer must examine the information memorandum the process documents claim that have been admitted or disputed litigation, title to assets, employee claims and the assumptions on which the resolution plan was priced.[9]

In *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta,* the Supreme Court stressed the commercial wisdom of the committee of creditors within the statutory scheme and the importance of finality in resolution plans. *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* confirmed that once a plan is approved under section 31, claims that are not part of the plan are generally extinguished against the corporate debtor subject to the scope of the judgment and the statue. These decisions support the fresh start rationale but they do not excuse careless diligence. The purchaser is still exposed to what the plan assumes to liabilities that survive under the law to implement defects in title and to obligations that are expressly retained or arise after approval. The exact plan and the operative orders must be read and the buyer should not rely on the slogan that insolvency delivers a completely liability free asset.[10]

4.6. Tax, employment and other operational regimes

Tax diligence should reconcile returns assessments, audits, withholding, indirect tax, transfer pricing, tax incentives, loss carry forwards, cross border payments and open litigation. As of 20 October 2026, the Income Tax Act, 2025 and the Income Tax Rules 2026 have replaced the Income Tax Act, 1961 under the new regime from 1 April 2026 subject to their transition and

[8] Foreign Exchange Management Regulations, 2019 as amended; Foreign Exchange Management Regulations, 2018 as amended. See Reserve Bank of India, FEMA Notifications, (https://m.rbi.org.in/scripts/Bs_FemaNotifications.aspx)

[9] Insolvency and Bankruptcy Code, No.31 of 2016, Section 29A-31, 43-51, 66(India)

[10] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531; Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657. The effect of a plan is governed by its text, section 31 and later applicable law.

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savings provisions. A transaction review must therefore identify the relevant assessment year and the date of the event instead of automatically citing the 1961 Act for every issue. Historic periods may continue to be governed by saved provisions, and the Good Services Tax framework remains a separate area of diligence. Tax indemnities should identify the tax periods, the types of tax the conduct of disputes, control of settlements, entitlement to refunds and limitations and should not assume that a private allocation binds the revenue authorities.[11]

The four labour codes, namely the Code on Wages 2019 the Industrial Relations Code, 2020 the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 were brought into effect on 21 November 2025. Even so state specific rules and transitional arrangements can matter in practice. Diligence should test wage and social security contributions, employee classification, contract labour, standing orders, industrial disputes, workplace safety, gratuity and other benefits, collective arrangements and any change in control rights. Transferring employees in an asset deal can raise different consent and continuity issues from a share purchase where the employing entity usually stays the same.[12]

Review of intellectual property should verify title assignments from employees and consultants, registration, security interests, third party and open source licences, infringement claims and the right after closing to use brands, software and know how. Environmental review should look at permits, waste, hazardous substances, land use, remediation orders and historical contamination. In financial services, telecom, insurance, pharmaceutical, energy, defence and other regulated sectors a license may require specific consent to a change of control.[13]

4.7. Personal data and cybersecurity

Diligence on data has to be sensitive to dates. The Digital Personal Data Protection Act, 2023 (DPDP Act) and the Digital Personal Data Protection Rules, 2025 come into force in phases. The one-year provisions are scheduled for 13 November 2026, which falls after this article cut off. It would therefore be inaccurate to say that all substantive DPDP obligations already apply. Existing obligations under the Information Technology Act, 2000 and its rules together with contractual confidentiality, cybersecurity and sectoral rules must be assessed alongside the

[11] Income tax Act, No.30 of 2025; Income tax Rules, 2026; Income Tax Act,2025, section 536. See Central Board of Direct Taxes, Income Tax Act, 2025 comes into force from 1 April 2026; Central Goods and Services Tax Act, no. 12 of 2017. Applicability to historical periods requires separate transition analysis.

[12] Code on Wages, no.29 of 2019; Industrial Relations Code, No.35 of 2020; Code on Social Security, No.36 of 2020; Occupational Safety, Health and Working Conditions Code. Ministry of Labour & Employment, Government Makes the Four Labour Codes Effective to Simplify and Streamline Labour Laws

[13] Patents Act, no. 39 of 1970; Trade Marks Act, No.47 of 1999; Copyright Act, No.14 of 1957; Environment Protection Act, No.29 of 1986; Water Prevention and Control of Pollution Act, No. 6 of 1974; Air prevention and control of pollution act, no. 14 of 1981. Applicability is sector and site specific.

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target's readiness for the phased DPDP regime.[14]

The review should cover what personal data the target collects, for what purposes and on what legal bases as well as notices, retention, processors, transfers, access controls, breaches, complaints and data given advisers. Disclosure should be kept to a minimum with data redacted or aggregated where possible and access should be logged and protected by safeguards. A change of ownership does not earlier unlawful collection lawful, nor does it automatically authorize every future purpose. Cyber review should test incident response, vendors, backups and privileged access and ask whether safeguards work in practice and not merely whether they exist on paper.[15]

5. Identifying and Prioritizing Transaction Risks

A useful diligence report is more than an inventory of documents. For each material finding it should set out the legal rule, the evidence, the business consequences, the likelihood, the estimated severity, the owner, the proposed remedy and the residual risk.

Defects in title and authority can threaten the validity of the acquisition and are usually gating matters. A minor filing may be curable but an unresolved pledge, a competing claim to share, an invalid allotment or a transfer restriction may need a condition or a restructuring. Regulatory exposure should be ranked by severity and by whether it can be reversed. A historic defect ,may be curable while an unapproved notifiable combination or a missing core license may make lawful completion impossible. Tax, employment and litigation risks should not be reduced to expected monetary loss where injunctions, penalties or interruption to the business are possible.

The evidence itself also has to be evaluated. Corporate records should be reconciled with public filings and executed contracts. For intellectual property, databases cannot replace evidence of assignments and the contractual scope of rights. For data and cyber risk policies should be tested against the real system architecture, incident room and technical testing proportionate to target. A "clean" data room means only that no adverse document was produced or identified within the limits of the review.

[14] Digital Personal Data Protection Act, No. 22 of 2023, section 1(2), 2, 18-26, 35, 38-44; Digital Personal Data Protection Rules, 2025, G.S.R.846(E) (https://www.meity.gov.in/documents/act-and-policies?page=1&persona=It-professional)

[15] Information Technology Act, no. 21 of 2000, Section 43A

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6. Designing the Due Diligence Process

The process should begin with a scope memorandum that sets out the structure, the entities, the jurisdictions, the materiality thresholds, the review period, the exclusions, the access available and the assumptions made. A share purchase calls for attention to inherited liabilities. An asset deal calls for attention to transferable assets, assumed liabilities and consents. A scheme calls for attention to the statutory procedure, the classes of stakeholders and the continuity of licenses and contracts. The risk map should be updated as the proposed structure becomes clearer.

A data room should be indexed by entity and by topic with version control, access logs and a process for questions. Missing documents and inconsistent answers must be recorded. Independent checks for company and charge records, court dockets, regulatory orders, IP registries, land records and public disclosures should be aimed at the risks already identified. Interviews can clarify operational facts but cannot replace verifiable evidence. Where privilege, privacy or confidentiality restrict access, the limitation should be recorded and a lawful alternative means of verification sought.

A red-flag review aims to find deal blockers quickly and may leave out detailed verification and those limits must be stated clearly. A full review also needs its assumptions to be stated. Findings should be classified as critical, high, medium or low using a documented method. Critical issues need to be escalated before singing or closing. The report should show which matters have been resolved, which have been allocated by contract, which have been accepted and which are waiting for remediation, each with a responsible owner. The closing checklist should then confirm that the consents, filings, releases and corrections have actually been completed.

7. Translating Findings into Contractual Protection

The acquisition agreement is the means by which many private law risks are allocated. Representations and warranties record agreed statements about the target at specified times. They give the buyer a contractual basis for a remedy if a statement turns out to be untrue but their value depends on the definitions, the disclosures, causation, mitigation and the sellers ability to pay. Diligence findings should shape both how broad the general warranties are and whether specific protection is needed.

A known defect should not be left to a general warranty, which may be qualified by the disclosure letter or excluded because the buyer knew of the issue.[16]

[16] Indian Contract Act,1872, Section 17-19(fraud and misrepresentation); Specific Relief Act, 1963.

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Specific indemnities are often a better firm for identified exposures such as a named tac proceedings, an environmental remediation obligation, a particular employee claim or a defined regulatory breach. Sections 124-125 of the Indian Contract Act,1872 give the statutory foundation for contracts of indemnity and for the indemnity-holder's rights against the promisor and the courts have interpreted how they operate. In *Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri,* the Bombay High Court explained that section 124 does not cover every possible form of indemnity and it considered relief before the indemnified party had actually paid a loss. The case is useful but it cannot stand in for careful drafting of the particular agreement. The contract should define covered losses, third party claims, control of defence and settlement, exclusions, notice, mitigation, interaction with other remedies and payment deadlines.[17]

Price and structure can work better than a promise to pay later. A verified liability may justify a reduction in the purchase price, debt like treatment, a working capital adjustment, a holdback, an escrow or deferred consideration. A regulatory approval, a release of shares or a lenders consent may be made a condition precedent. A covenant can require the seller to run the business in the ordinary course between singing and closing and a long stop date with a termination right can deal with delays outside the parties control. Material adverse effect clauses must be drafted with care because their scope, their carve outs and the way they allocate general market risk are negotiated and depend on the facts. Earn outs can bridge gaps in valuation but they create post-closing disputes over accounting, operational control and the duty to act consistently with the agreed calculation mechanism.

Drafting should respond to the actual risk and should not simply copy a precedent. Caps, baskets, time limits and exclusive remedy clauses make outcomes more predictable but may leave known losses with the buyer. Fraud carves outs and limits on consequential loss need careful drafting. An escrow works only if its amount, release conditions and duration fit the risk. Warranty and indemnity insurance may exclude known or disclosed issues, tax matters and other specified losses. No contractual device necessarily prevents public enforcement or extinguishes the rights of third parties.

A practical rule follows from this. Every material finding should appear in a transaction decision log that links (i) the evidence (ii) the legal analysis (iii) the effect on valuation (iv) the proposed contractual or regulatory (v) the approval authority and (vi) the residual risk after the remedy. If no remedy is available, the buyer should expressly accept the risk through someone

[17] Indian Contract Act, 1872, section 124-125; *Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri* A.I.R. 1942 Bom.302

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with the proper authority, look for a different structure or reconsider the transaction. A well written due diligence report that does not influence the deal documents or the decision to close has failed at its central task.

8. Judicial Guidance and Its Limits

Indian courts have not laid down a single general test for due diligence that governs all M&A transactions, so the most useful authorities are contextual. In *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.,* the Supreme Court drew attention back to statutory powers to the articles and to the limited grounds on which relief for oppression and mismanagement may be granted. The lesson for diligence is that board composition, shareholder protection, control rights and reserved matters must be read from the governing documents and the statutory framework together. Label such as "minority protection" or "control" do not settle issue without the underlying rights and facts.[18]

In competition matters, *Competition Commission of India v. Bharti Airtel Ltd.* dealt with the relationship between sectoral regulation and the CCI's competition jurisdiction. It held in its context that the findings of the specialist regulator or technical issues could be needed before the CCI proceeded. It does not create a blanket exemption from competition law for regulated industries. The practical point for diligence is coordination: sectoral permission and competition analysis can depend on one another and the deal timetable should leave room for each regulator to play its part in the right order.[19]

The insolvency cases discussed above likewise show that legal consequences turn on the statutory process and the precise order. *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* illustrates that eligibility under section 29A can decide whether a resolution applicant may take part while *Essar Steel and Ghanshyam Mishra* stress the commercial and finality objectives of the resolution framework. These are not ordinary share purchase precedents. Their significance lies in showing that diligence must fit the architecture of the transaction at hand: the risks in court approved resolution process differ from those in a solvent private sale and the applicable statute may change which liabilities survive.[20]

Finally, *Vodafone International Holdings B.V v. Union of India* remains important in

[18] *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.* 9 S.C.C. 449

[19] *Competition Commission of India v. Bharti Airtel Ltd.* 2 S.C.C. 521. The decision concerns regulatory sequencing in a telecom competition dispute, not a universal exemption for regulated transaction

[20] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta 2 S.C.C. 1; Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, 8 S.C.C. 531; Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd, 9 S.C.C. 657.

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discussions of indirect share transfers and of how transaction structuring interacts with tax law but it must be cited as history and read alongside later legislative change. It cannot be used to set aside the statutory provisions in force for a present-day transaction. The wider methodological point is that a precedent is only as useful as it fits in time and in doctrine. A sound diligence opinion explains not only what a case held but why it governs the actual transaction whether the law has changed since and which factual differences remain.[21]

9. Critical Analysis and Reform Proposals

The central weakness is the translation gap. Teams may collect documents and issues a report without ever converting the findings into decisions that someone is accountable for. Numerical rankings can also create false precision and may underweight risks such as the loss of key license or software rights. And seller disclosure that is not independently verified is open to incomplete records and to the incentive to play down adverse facts. Diligence remains limited by access, time, cost and privilege and by legal risks that emerge only through later decisions or events.

First, deal teams should keep a risk to remedy register that records the evidence, owner, severity, proposed remedy, decision maker, closing dependency and residual risk. This governance tool can be scaled to the size of the deal. Second, review should be tried. A documented red flag review may suit a small, low risk acquisition, while regulated, cross-border, data-intensive or high value deals justify closer scrutiny. Proportionality must never be used as a reason to skip ownership checks or mandatory approvals.

Third, regulatory sequencing should be managed through single approval chart naming each regulator, trigger, filing owner, evidence, timing, standstill consequence and dependency. Fourth, data minimization, redaction, clean teams and access logging should be applied while current privacy duties are reviewed, and preparations are made DPDP implementation. Fifth, any material post-closing remediation should be given to an executive owner with a budget, a deadline and an escalation path. These steps take coordination an may slow a deal, so they should be scaled to the level of risk. Their value is that they make findings actionable.

Diligence reports should not certify that there are no liabilities where the review relied on management documents or left out local searches, technical testing, jurisdictions or historic periods. Assumptions, exclusions and access limits should be stated openly. Qualifying the report in this way helps decision makers see what is still unknown. Buyers should distinguish

[21] *Vodafone International Holdings B.V v. Union of India,* 6 S.C.C. 613. Subsequent legislative amendments and the Income tax Act,2025 must be reviewed before relying on the decision for a current tax position.

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defects that can be cured before closing form risks that cannot credibly be quantified, insured or allocated. The latter may be unacceptable even where their probability cannot be estimated.

10. Comparative Observations

M&A practice in the United States and the United Kingdom relies on disclosure schedules, specific indemnities, escrow and warranty insurance to allocate risks once they have been discovered. This technique can help Indian parties but their legal effect is not the same in every jurisdiction. Indian agreements operate under the Contract Act, the Specific Relief Act, limits of public policy, stamp and registration rules, tax law and sectoral regulation. Imported clauses may also assume remedies for insurance products that are not available on equivalent terms. Comparative learning should be functional: identify the risk the clause addresses, then test the clause against Indian law and the parties commercial realities.

A similar lesson arises in data protection. The accountability model of the European Union's GDPR is often used as a benchmark for privacy governance but India has adopted its own statutory structure and phased implementation under the DPDP Act. It would be wrong either to apply foreign obligations as though they were Indian Law or to wait until every Indian Provision is fully operative before evaluating a target's data practices. The sensible position is to look forward: test current duties, identify the likely cost transition, document lawful handling during diligence and include post-closing implementation obligation where they are needed. Comparative analysis can therefore help frame controls, but it cannot replace advice specific to the jurisdiction.[22]

11. Conclusion

Legal due diligence is essential to M&A but its is neither a safety certificate nor a substitute for commercial judgment. Its value lies in exposing the information gap and in connecting material finding to price, structure, conditions, contractual protection and action after closing. Corporate, securities, competition, foreign- investment, insolvency, tax, labor, IP, environmental and data rules may all affect a deal, depending on its structure and on the law in force.

The proposed diligence to remedy framework offers a disciplined method: identify the issue, validate the evidence, assess materiality, allocate or condition the risk and monitor what

[22] Regulation (EU) 2016/679 of the European Parliament and the council of 27 April 2016 (General Data Protection Regulation), 2016 O.J. (L 119) 1; Digital Protection Act, as subject to phased commencement. The comparison is conceptual and does not import EU obligations into Indian Law.

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remains. The framework is deliberately practical, because discovering a risk is only the beginning. Warranties and indemnities may shift contractual loss, but they cannot automatically bind regulators or third parties. Regulatory clearance may depend on independent statutory tests. And integration after closing can expose weakness that the preclosing documents did not reveal. Effective diligence therefore needs verification of the current law, evidence that goes beyond seller summaries, honest disclosure of the limits of the remedies and an accountable process for remediation.

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